TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~292~~ 98

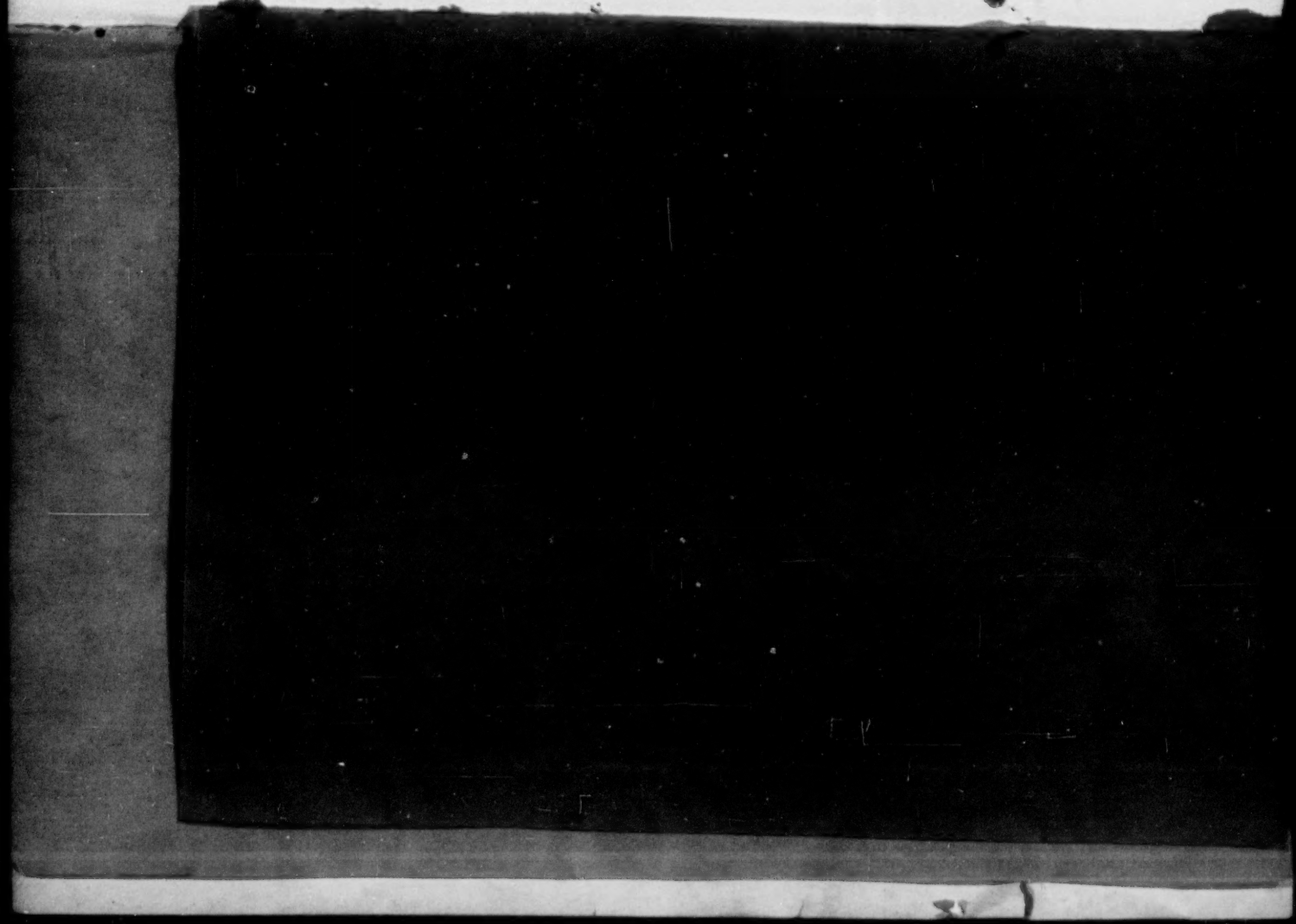
THE WESTERN TRANSPORTATION COMPANY, PLAINTIFF IN ERROR,

vs.

SAMUEL A. DOWNER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED NOVEMBER 26, 1869.



22

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1 Pleas in the circuit court of the United States of America for the northern district of Illinois, held at the United States court-rooms in the city of Chicago, in the district aforesaid, before the Hon. Andrew G. Miller, judge of the district court of the United States for the district of Wisconsin, who was designated and appointed by the Hon. David Davis, one of the justices of the Supreme Court of the United States assigned to the seventh circuit, to hold said circuit court of the United States for said northern district of Illinois, and by virtue of said appointment sat in said last-named court for the trial of causes therein, on Saturday, the twentieth day of March, A. D. 1869, and of our independence the 93d year.

WM H. BRADLEY, *Clerk.*

SAMUEL A. DOWNER
vs.
THE WESTERN TRANSPORTATION COMPANY. } 8166.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the fourteenth day of December, in the year of our Lord one thousand eight hundred and sixty-seven, the Western Transportation Company, by McAllister & Stiles, its
2 attorneys, filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in the said district, its transcript of a record from the superior court of Chicago, in the county of Cook, and State of Illinois, in a cause wherein Samuel A. Downer is plaintiff and said The Western Transportation Company is defendant; and also filed therewith the original præcipe, bond for costs, declaration, notice of application for removal, petition, and bond for the removal of said cause; which transcript and original papers are respectively in the words and figures following, to wit:

Transcript.

Be it remembered that heretofore, to wit, on the twentieth day of November, in the year of our Lord one thousand eight hundred and sixty-seven, there issued out of the office of the superior court of Chicago the people's writ of summons; which said writ, together with the return of the sheriff, thereon endorsed, is in words and figures as follows, to wit:

STATE OF ILLINOIS, *Cook County, ss:*

3 The people of the State of Illinois to the sheriff of said county, greeting:

We command you that you summon the Western Transportation Company, if it shall be found in your county, personally to be and appear before the superior court of Chicago, of said Cook County, on the first day of the term thereof to be holden at the court-house in Chicago, in said Cook County, on the first Monday of December next, to answer unto Samuel A. Downer in a plea of trespass on the case upon promises to the damage of the said plaintiff, as is said, in the sum of five thousand dollars; and have you there this writ, with an endorsement thereon in what manner you have executed the same.

Witness Augustus Jacobson, clerk of our said court, and the seal thereof, at Chicago, aforesaid, this 20th day of November, A. D. 1867.

[SEAL.] A. JACOBSON, *Clerk.*

Served the within writ on the within-named Western Transportation Company by reading the same and delivering a copy thereof to Jno. W. Tuttle, agent of said company, this 22d day of November, 1867.

4 J. L. BEVERIDGE, *Sheriff*,
B. C. GAYNS, *Deputy*.

And afterwards, to wit, on the third day of December, in the year last aforesaid, the same being one of the days of the December term of said court, the following, among other proceedings, were had in said court and entered of record, to wit:

SAMUEL A. DOWNER
vs.
THE WESTERN TRANSPORTATION COMPANY. } Assumpsit, (cause transferred.)

And now, at this day, comes the plaintiff, by Messrs. Bordon, Spofford and McDaid, his attorneys, and the defendant, by Messrs. McAllister and Stiles, its attorneys, also comes, and on reading and filing its petition herein, and on filing a good and sufficient bond, which is approved by the court, it is ordered by the court, on its motion, that said cause be transferred to the United States circuit court for the northern district of Illinois; and it is further ordered by the court that the clerk of this court do forthwith make out a complete transcript of all
5 orders and proceedings had and entered of record in said cause, and certify and transmit the same, together with the necessary papers, to the clerk of the said United States circuit court, pursuant to the act of Congress in such case made and provided.

And afterwards the costs of said suit were taxed by the clerk, amounting to the sum of $7 25.

STATE OF ILLINOIS, *Cook County, ss:*

I, Augustus Jacobson, clerk of the superior court of Chicago within and for the county and State aforesaid, do hereby certify that the above and foregoing is a full, true, and perfect copy of the people's writ of summons, and the return of the sheriff thereon endorsed, and of the only order of court entered of record in a certain cause lately pending in said court, on the law side thereof, wherein Samuel A. Downer was plaintiff, and the Western Transportation Company defendant.

6 { SUPERIOR COURT OF CHICAGO, ILLINOIS, SEAL. } In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, this 14th day of December, 1867.

A. JACOBSON, *Cl'k.*

[5 c't U. S. int. rev. stamp cancelled.]

(Endorsed:) Filed Dec. 14, 1867.

W'M H. BRADLEY, *Cl'k.*

Præcipe.

STATE OF ILLINOIS, *County of Cook, ss:*

In the superior court of Chicago, to the December term, A. D. 1867.

SAMUEL A. DOWNER
vs.
THE WESTERN TRANSPORTATION COMPANY. } Assumpsit; damages, $5,000 00.

The clerk of said court will issue a summons returnable as above, to be directed to the sheriff of Cook County, to execute.

BORDEN, SPOFFORD & McDAID, & M. B. RICH,
Attorneys for Plaintiff.

To A. JACOBSON, *Clerk of Superior Court.*

7 (Endorsed:) Filed Nov. 20, 1867.

A. JACOBSON, *Clk.*

Filed December 14, 1867.

WM. H. BRADLEY, *Clk.*

Bond for costs.

Superior court of Chicago.

SAMUEL A. DOWNER
vs.
THE WESTERN TRANSPORTATION COMPANY.

I do hereby enter myself security for costs in this cause, and acknowledge myself bound to pay, or cause to be paid, all costs which may accrue in this action, either to the opposite party or to any of the officers of this court, in pursuance of the laws of this State.

BORDEN, SPOFFORD & McDAID.

Dated this twentieth day of November, A. D. 1867.

(Endorsed:) Filed this 20 day of November, A. D. 1867.

A. JACOBSON, *Clerk.*

Filed Dec. 14, 1867.

W'M H. BRADLEY, *Clk.*

8 *Declaration.*

STATE OF ILLINOIS, *County of Cook, ss:*

In the superior court of Chicago, to the December term, A. D. 1867.

SAMUEL A. DOWNER
vs.
THE WESTERN TRANSPORTATION COMPANY.

Samuel A. Downer, the said plaintiff in this suit, by Spofford & McDaid, his attorneys, complains of the Western Transportation Company, the said defendant, in a plea of trespass on the case on promises:

For that whereas the said defendant, before and at the time of the making its said promise and undertaking hereinafter next mentioned, was a common-carrier of goods and chattels for hire from a certain place, to wit, from the city of New York, in the State of New York, to a certain other place, to wit, to Chicago, Illinois; and the said defendant being such carrier as aforesaid, the said plaintiff heretofore, to wit, on the seventh and eighth days of August, A. D. 1867, at the special instance and request of the said defendant, caused to be delivered, in
9 good order, to the said defendant, so being such carrier as aforesaid, at New York, to wit, at Chicago aforesaid, certain goods and chattels, to wit, eighty-four (84) bags coffee, marked "D. & Co., Chicago, Ill., W. T. Co.," of the said plaintiff, of great value, to wit, of five thousand dollars ($5,000 00) of lawful money of the United States, to be taken care of, and safely and securely carried and conveyed by the said defendant, as such carrier as aforesaid, from New York, aforesaid, to Chicago, aforesaid, and there, to wit, at Chicago aforesaid, to be safely and securely delivered in good order by the said defendant for the said plaintiff, the following liabilities, and losses excepted: All losses and damages on goods which are insured; dangers of navigation on the lakes and rivers; damage or loss by collisions, explosions, spontaneous combustion, or fires; unavoidable delays; rust of sheet and bundle iron; breakage of marble, of all kinds of glass and glassware, stoves, and furniture of all kind; leakages of molasses, oil, and liquids of all kinds; loss of nuts, shot, and coffee in single sacks; also for any loss or miscarriage of goods not properly marked; and for
10 any deficiency or damage in packages, if receipted in apparent good order when delivered at Chicago. And in consideration thereof, and of certain freight and reward to the said defendant in that behalf, he, the said defendant, then and there undertook, and faithfully promised the said plaintiff, to take care of, and safely and securely carry and convey and deliver, the said goods and merchandize as aforesaid. And although the said defendant, so being such carrier as aforesaid, then and there had and received the said goods and merchandize to be carried, conveyed, and delivered as aforesaid; and although a reasonable time for the carrying, conveying, and delivering of the said goods and merchandize, as aforesaid, hath long since elapsed, yet the said defendant, so being a carrier as aforesaid, not regarding its duty in that respect, nor its said promise and undertaking, but contriving and intending to deceive, injure, and defraud the said plaintiff in this behalf, did not, nor would, take care of, and safely and securely carry or convey, the said goods and merchandize, so shipped from New York,
11 aforesaid, to Chicago, aforesaid, to wit, at Chicago aforesaid, safely or in good condition deliver the same for the said plaintiff, although the said defendant was not prevented or discharged from so delivering the said goods and merchandize by the happening or occurrence of any or either of the liabilities or losses excepted in its aforesaid undertaking and promise; but, on the contrary thereof, it, the said defendant, so being such carrier as aforesaid, so carelessly and negligently behaved and conducted itself with respect to the said goods and merchandize, that, by and through the mere carelessness, negligence, and improper conduct of the said defendant, and its mariners and servants in that behalf, the said goods and merchandize being of great value, to wit, of the value of five thousand dollars, ($5,000 00,) became and was greatly damaged and injured, and became and was entirely worthless and wholly lost to the said plaintiff, to wit, at Chicago aforesaid, to the damage of the said plaintiff of five thousand dollars, ($5,000 00.)

And whereas also the said defendant, before and at the time of the making its said promise and undertaking hereinafter next men-
12 tioned, was a common-carrier, for hire, of goods and chattels, from a certain place, to wit, from the city of New York, in the State of New York, to a certain other place, to wit, to Chicago, Illinois; and the said defendant being such carrier as aforesaid, the said plaintiff heretofore, to wit, on the seventh and eighth days of August, A. D. 1867, at the special instance and request of the said defendant, caused to be delivered in good order to the said defendant, so being such carrier as aforesaid, at New York, to wit, at Chicago aforesaid, certain goods and chattels, to wit, eighty-four (84) bags coffee, marked "D. & Co., Chicago, Ill., W. T. Co.," of the said plaintiff, of great value, to wit, of five thousand dollars ($5,000 00) of lawful money of the United States, to be taken care of, and safely and securely carried and conveyed, by the said defendant, as such carrier as aforesaid, from New York, aforesaid, to Chicago, aforesaid, & there, to wit, at Chicago aforesaid, to be safely and securely delivered in good order by the said defendant for the said plaintiff. And thereupon the said defendant made and delivered to the said
13 plaintiff a certain instrument in writing, commonly known as a bill of lading, dated Aug. 7 & 8, 1867, and signed Hugh Allen, agent, Eslor, by which instrument in writing the said defendant acknowledged the receipt, in apparent good order, of eighty-four (84) bags coffee for Downer & Co., which said firm of Downer & Co. is now, and was on the 7 & 8th days of August, 1867, composed solely of Samuel A. Downer, the said plaintiff in this suit. And in consideration of said delivery of said goods and chattels to said defendant as aforesaid, and of certain freight and reward to said defendant in that behalf expressed in said bill of lading, to wit, thirty (30) cents per one hundred pounds, (100 lbs.,) and which has been paid to the said defendant, the said defendant undertook and promised the said plaintiff to forward the said goods and merchandize to Chicago, the following liabilities and losses excepted: All losses and damages on goods which are insured; dangers of navigation on the lakes & rivers; damage or loss by collisions, explosions, spontaneous combustion, or fires; unavoidable delays; rust of sheet and bundle iron; breakage of marble, of all kinds of glass and glassware, stoves, and furniture of all kind; leakages of molasses,
14 oil, and liquids of all kinds; loss of nuts, shot, and coffee in single sacks; also for any loss or miscarriage of goods not properly marked, and for any deficiency or damage in packages, if receipted in apparent good order, when delivered at Chicago. And although the said defendant, so being such carrier, was not prevented or discharged from forwarding the said goods and merchandize to Chicago aforesaid, and delivering the said goods and merchandize in good condition to the said plaintiff, at Chicago aforesaid, by the happening or occurrence of any or either of the liabilities or losses except in the aforesaid instrument in writing, and although a reasonable time for the carrying, conveying, and delivering the said goods and merchandize, as aforesaid, hath long since elapsed, yet the said defendant, so being a carrier as aforesaid, not regarding its duty in that respect, nor its said promise and undertaking, but contriving and intending to deceive, injure, and defraud the said plaintiff in this behalf, did not nor would take care of, and safely and securely carry or convey, the said goods and chattels so shipped from New York, aforesaid, to Chicago, aforesaid, to wit, at Chicago
15 aforesaid, safely or in good condition deliver the same for the said plaintiff, but, on the contrary thereof, it, the said defendant, so being

such carrier as aforesaid, so carelessly and negligently behaved and conducted itself with respect to the said goods and merchandize, that, by and through the mere carelessness, negligence, and improper conduct of the said defendant, and its mariners and servants in that behalf, the said goods and merchandize, being of great value, to wit, of the value of five thousand dollars, ($5,000 00,) became and was greatly damaged, injured, and spoiled, and became and was of little or no value to the said plaintiff, to wit, at Chicago aforesaid, to the damage of the said plaintiff of five thousand dollars, ($5,000 00.)

And whereas also heretofore, to wit, on the day and year aforesaid, at Chicago aforesaid, in consideration that the said plaintiff, at the special instance and request of the said defendant, had then and there caused to be delivered to the said defendant divers other goods and merchandize, to wit, goods and merchandize of the like number, quantity, quality, description, and value as those in the said first count
16 mentioned, to be taken care of and safely and securely carried and conveyed by the said defendant from New York, aforesaid, to Chicago, aforesaid, to be safely and securely delivered for the said plaintiff for certain freight and reward to the said defendant in that behalf, it, the said defendant, undertook, and then and there faithfully promised the said plaintiff, to take due and proper care of the said last-mentioned goods and merchandize while he had the care and custody thereof for the purpose aforesaid; and although the said defendant then and there had and received the said last-mentioned goods and merchandize for the purpose aforesaid, yet the said defendant, not regarding its duty in that behalf, nor its said last-mentioned promise and undertaking, but contriving and intending to injure and deceive the said plaintiff in this behalf, whilst the said defendant had the care and custody of the said last-mentioned goods and merchandize for the purpose last aforesaid, took so little and so bad care of the same, that, by and through the mere carelessness and negligence of the said defendant in that behalf,
17 the said last-mentioned goods and merchandize, being of the value aforesaid, to wit, on the day and year aforesaid, became and were wholly lost to the said plaintiff, to wit, at Chicago aforesaid.

And whereas also, heretofore, to wit, on the eighth day of August, A. D. 1867, at Chicago, Illinois, in consideration that the said defendant, at his special instance and request, then had the care and custody of divers goods and chattels of the said plaintiff, to wit, goods and chattels of the like number, quantity, quality, description, and value as those in the said first count mentioned, it, the said defendant, undertook, and then and there faithfully promised the said plaintiff, to take due and proper care thereof whilst the said defendant so had the care and custody of the same; yet the said defendant, not regarding its said promise and undertakings, but contriving and intending to injure and defraud the said plaintiff in this behalf whilst the said defendant so had the care and custody of the said goods and chattels, took so little and such bad and improper care thereof that the same afterwards, to wit, on the day and year aforesaid, at Chicago aforesaid, became and
18 were greatly damaged and injured and wholly lost to the said plaintiff, to the damage of the said plaintiff of the sum of five thousand dollars, ($5,000 00;) wherefore he brings his suit.

SPOFFORD & McDAID, and
M. B. RICH,
Plaintiff's Attorneys.

Copy of instrument sued on.

The Western Transportation Company, office Nos. 13 & 15 Old Slip.
Received, New York, Aug. 7 & 8, 1867, from Beards & Cummings on board boat Haws, the following packages (contents and value unknown) in apparent good order represented and warranted by owner or shipper to be plainly and legibly marked on the same as in the margin hereof, viz:

Marked D. & Co. Chicago, Ill., W. T. Co.

Eighty-four (84) bags coffee, for Downer & Co., which the Western Transportation Company Co. agree to forward to Chicago at the following rates of freight, to wit:

First class at cents per 100 lbs., by steam on the lakes. Second class at cents per 100 lbs., by steam on the lakes. Third class at cents per 100 lbs., by steam on the lakes. Fourth class at 30 cents per 100 lbs., by steam on the lakes.

19 The following liabilities and losses excepted: all losses and damages on goods which are insured; dangers of navigation on the lakes and rivers; damages or loss by collisions, explosions, spontaneous combustion, or fires; unavoidable delays; rust of sheet and bundle iron; breakage of marble, of all kinds of glass and glassware, stoves, and furniture of all kinds; leakages of molasses, oil, and liquids of all kinds; loss of nuts, shot, and coffee in single sacks; also for any loss or miscarriage of goods not properly marked, and for any deficiency or damage in packages, if receipted in apparent good order, when delivered at Chi'o. All packages not marked "sail" or "steam" may be forwarded by either, at option of the carrier. All goods may be delivered to the agents of the party of the first part at the lake ports of delivery, and such agents may act as warehouse keepers, in the receipt of, delivery, or forwarding of said goods, and charge therefor; and if any goods be lost, damaged, or destroyed by accident or fire, the party of the second part will be required to pay the freight and charges to and at the place where such loss, &c., may happen.

HUGH ALLEN, *Agent.*
ESLER.

20 (Endorsed:) Filed Nov. 22, 1867.

A. JACOBSON, *Clk.*

Filed Dec. 14, 1867.

W'M H. BRADLEY, *Clk.*

Notice.

STATE OF ILLINOIS, *Cook County:*

In sup. c't of Chicago, Dec'r T., 1867..

DOWNER
vs.
WES'N TR'NS. COMPANY.

Take notice th't on to-morrow morning at the opening of court, or as soon thereafter as counsel can be heard, we shall ask the court to remove said cause to the cir. court of the U. S. for northern dis't of Ill's, in accordance with petition of def't then to be filed.

Chicago, Dec'r 2d, '67.

McALLISTER & STILES,
Att'ys for Def't.

To BORDEN, SPOFFORD & McDAID, *for Pl'ff.*

Due service of within by copy this 2d Dec'r, 1867.
BORDEN, SPOFFORD & McDAID.

(Endorsed:) Filed Dec. 3, 1867.
AUG. JACOBSON, *Cl.*

Filed Dec. 14, 1867.
W'M H. BRADLEY, *Clk.*

21 *Petition.*

STATE OF ILLINOIS, *Cook County:*

In superior court of Chicago, Dec. term, 1867.

SAMUEL A. DOWNER
vs.
THE WESTERN TRANSPORTATION COMPANY.

The Western Transportation Company, defendant in the above cause, states to the court that this defendant was, long before the commencement of this suit, at the time, and now is and was, a corporation duly organized & created under and by virtue of the laws of the State of New York, and before and at the time of the commencement of this suit was, and now is, a resident and citizen of the State of New York, & that said plaintiff at the time of the commencement of this suit was, and now is, a citizen of the State of Illinois; that the matter in dispute in said suit exceeds the sum of five hundred dollars, exclusive of costs; and this defendant prays the court that this cause be removed to the circuit court of the United States for the northern district of Illinois. And your petitioner hereby offers to execute and file the bond as re-
22 quired by the act of Congress in such case made & provided.
THE WESTERN TRANSPORTATION COMP'Y.

Superior court of Chicago.

SAMUEL A. DOWNER
vs.
THE WESTERN TRANSPORTATION COMPANY.

STATE OF ILLINOIS, *County of Cook, ss:*

Jonathan W. Tuttle, being duly sworn, deposes and says that he is, and for a long time has been, the managing agent and attorney in fact of the above-named defendant; that he has heard the foregoing petition of the said defendant read and knows the contents thereof. And he further says that the several matters and things therein stated are true in substance & fact.

JON'N W. TUTTLE.

Subscribed and sworn to before me this 3d December, A. D. 1867.
[SEAL.] FRANCIS A. HOFFMAN, JR.,
Notary Public.

(Endorsed:) Filed Dec. 3, 1867.
AUG. JACOBSON, *Cl.*

23 Filed Dec. 14, 1867.
W'M H. BRADLEY, *Clk.*

Bond.

Know all men by these presents that we, the Western Transportation Company, by Jonathan W. Tuttle, its attorney in fact, and Jon'n W. Tuttle are held and firmly bound unto Samuel A. Downer in the penal sum of five hundred dollars, for the full payment of which sum well and truly to be made to the said Downer, his heirs, or assigns, we bind ourselves, our heirs and assigns, firmly by these presents.

The condition of this obligation is such that whereas the above-named Samuel A. Downer has commenced his certain action at law against the said Western Transportation Company in the superior court of Chicago, which said suit is still pending & undetermined in said court, in the county of Cook and State of Illinois; and whereas the said defendant has filed a petition in said cause praying the removal of the same to the circuit court of the United States for the northern district of Illinois:

24 Now, if the said Western Transportation Company, defendant in said suit, shall, on the first day of the next term of the said circuit court of the United States enter in said court copies of all papers, all process in the said cause, then and in that event this obligation to be void and of no effect; otherwise of full force and binding.

Witness our hands and seals the 3d day of December, 1867.

The Western Transportation Company,

By JON'N W. TUTTLE, [SEAL.]
Attorney in fact,
JON'N W. TUTTLE, [SEAL.]

(Endorsed:) Filed Dec. 3, 1867.

AUG. JACOBSON, *Cl.*

Filed Dec. 14, 1867.

W'M H. BRADLEY, *Cl'k.*

On this day, to wit, the 16th day of December, A. D. 1867, came said defendant by its attorneys, and filed in said clerk's office its plea in said entitled cause; which said plea is in the words and figures following to

Plea.

THE W[illegible]ited States circuit court, northern district of Illinois.

[illegible]N TRANSPORTATION COMPANY }
ads. }
25 ANGEL A. DOWNER. }

comes [illegible]id defendant, by McAllister & Stiles, its attorneys, that it did not [illegible]fends the wrong and injury, when, &c., and says plaintiff hath a[illegible]ke or promise in manner and form as the said ant puts itself up[illegible] of complained against it. And of this the defend-[illegible]untry.

And the said plain[illegible] McALLISTER & STILES,
Def't's Att'ys.

[illegible]he like.

(Endorsed:) Filed Dec[illegible] By SPOFFORD & McDAID &
M. B. RICH, *his Att'ys.*

W'M H. BRADLEY, *Cl'k.*

On this day, to wit, the 31st day of March, in the adjourned March term, A. D. 1868, of said court in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

SAMUEL A. DOWNER
vs.
THE WESTERN TRANSPORTATION COMPANY. } Assumpsit.

26 Now come the parties by their attorneys, and upon issue joined thereupon come a jury of good and lawful men to wit: R. M. Pritchard, A. S. Hollister, James Rose, John W. Johnston, Henry W. Angel, H. B Hart, E. M. Portch, Smith McClevy, Sylvanus H. Kellogg, A. White, Julius M. Warren, and Jason McCord, who were all duly elected, tried, and sworn well and truly to try said issue. And after hearing the evidence, the hour of adjournment having arrived, the further trial of the cause is postponed until to-morrow morning.

On this day, to wit, the 1st day of April, in the adjourned March term, A. D. 1868, of said court in the record of the proceedings thereof in said entitled cause is the following entry to wit:

SAMUEL A. DOWNER
vs.
THE WESTERN TRANSPORTATION COMPANY } Assumpsit.

27 Now come again the parties by their attorneys, and now come also the jury in this behalf empanneled and sworn; and, after hearing the arguments of counsel and receiving the instructions of the court, the jury retire to consider of their verdict; and by agreement of the parties, by their attorneys, the jury, when they shall have agreed upon a verdict, may sign and seal the same and deliver it to the clerk and disperse.

On this day, to wit, the second day of April, in the adjourned March term, A. D. 1868, of said court in the record of the proceedings thereof in said entitled cause is the following entry to wit:

SAMUEL A. DOWNER
vs.
THE WESTERN TRANSPORTATION COMPANY. } Assumpsit.

The jury, in this behalf empanneled and sworn, having t[he] upon
turned into court and reported that they had been unable t[o] longer
a verdict, and that there was no prospect of their agreeing[ir] attor-
together, thereupon, by agreement of the parties, [rged] from
28 neys, it is ordered by the court that the jury be
the further consideration of the cause.

On this day, to wit, the 16th day of March, in [arned March
term, A. D. 1869, of said court in the record of t[he] [edings thereof
in said entitled cause is the following entry, to

[ssumpsit.
SAMUEL A. DOWNER,
vs.
THE WESTERN TRANSPORTATION COM[pe] counsel of the par-

Now cometh parties by their attorn

ties in open court, that the plaintiff is a citizen of the State of Illinois, & that the defendant is a corporation of the State of New York, and that declaration on file be considered the same as if originally filed in this court, and upon issue joined thereupon come a jury of good and lawful men, to wit: C. R. Campbell, William Beith, John L. McMahon, T. C. James, Nathan Yarnell, Thomas Rapp, C. R. Potter, J. R. Walker, W. H. Naulty, William Lum, William Johnston, and Thomas H. Armstrong, who were all duly elected, tried, and sworn well and
29 truly to try said issue; and after hearing the evidence and the arguments of counsel, and receiving the instructions of the court the jury retired to consider of their verdict; and after a short absence the jury returned into court the following verdict, to wit: "We, the jury, find the issue for the plaintiff, and assess his damages to the sum of three thousand four hundred and seventy-five dollars and ten cents."

And thereupon the defendant, by its attorney, moves the court for a new trial herein.

On this day, to wit, the 20th day of March, in the adjourned March term, A. D. 1869, of said court in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

SAMUEL A. DOWNER
vs.
THE WESTERN TRANSPORTATION COMPANY. } Assumpsit.

30 Now came the parties by their attorneys, and now comes on to be heard the motion of the defendant heretofore entered herein for a new trial of this cause; and after hearing the arguments of counsel, the court being sufficiently advised in the premises, overrules said motion.

It is thereupon considered and adjudged by the court that the said plaintiff do have and recover of the said defendant the said sum of three thousand four hundred and seventy-five dollars and ten cents, his damages so as aforesaid assessed, together with his costs and charges by him about his suit in this behalf expended, amounting to the sum of sixty-four dollars and ninety cents, and that he have execution therefor.

31 On the trial of said cause the following exceptions were taken and were allowed by the court and made of record, and are in the words and figures following, to wit:

Bill of exceptions.

United States circuit court for the northern dist. of Ill's, March term, 1869.

SAMUEL A. DOWNER
vs.
WESTERN TRANS. COMPANY. } Bill of exceptions.

Be it remembered that on the trial of this cause, at the March term, A. D. 1869, of the said United States circuit court for the northern dist. of Illinois, before a jury and the Hon. A. G. Miller presiding as judge of the said court, the complainant, to maintain the issues on his part, introduced the following evidence.

A. N. Rawson, a witness called on behalf of the complainant, being duly sworn, was examined in chief by Mr. Bordan, and testified as follows:

Q. What is your business, Mr. Rawson?

32 A. Book-keeper.

Q. For whom?

A. Downer and Co.

Q. How long?

A. Five years nearly.

Q. Who constitutes that firm?

A. Samuel A. Downer.

Q. Here is a bill of lading; just tell the jury about that coffee.

A. That coffee arrived on the propeller Buffalo on the 31st of August, 1867, in a ruined condition, having been throughly wet. We tried to save a portion of it by drying it and spreading it out on the floor of the loft, but it was too much damaged to be saved—any portion of it; the whole was lost; there was nothing saved.

Q. What did you do with it finely?

A. We finely hauled it away and threw it into the dock or lake; it rotted.

Q. After it was brought to your store you spread it out, you say, and tried to dry it?

A. We spread it out in the loft; yes, sir.

Q. Is that the same coffee? (Handing witness bill of lading and receipt for freight.)

A. That is the same coffee, and this is a receipt for freight.

Q. Well, sir, do you know what coffee was worth; what that

33 coffee was worth in this market at that time?

A. Yes, sir.

Q. Well, just state what it was worth, and what the total loss amounted to.

A. There was 32 bags of Santos coffee, weighing 5,140 lbs., and the value at that time in the market was 26 cents per pound, amounting $1,336 40; and there was five sacks of Rio coffee, weighing 8,384 lbs., at 22 cents a pound, amounting to $1,844 48.

Q. Just state to the jury, so that they can all hear, what the value of the coffee was.

A. The total value?

Q. Yes; and the value per pound.

A. The Santos coffee was worth 26 cents per pound, and the Rio 22 cents per pound; the total amount was $3,180 88.

34 Cross-examination by Mr. Stiles.

Q. This coffee, if I understood you, Mr. Rawson, was [was] landed from the propeller Buffalo?

A. Yes, sir; from the propeller Buffalo.

Q. On the night of the 31st of August, 1867?

A. Yes, sir.

Q. Do you know who commanded the Buffalo?

A. I know only by hearsay. I heard Mr. Drake testify that he commanded the propeller.

Q. Do you know anything about the invoices?

A. Yes, sir; we have the invoices.

Q. Where?

A. Mr. Downer has them with him, I guess.

By Mr. Stiles. I wish you would produce them, Mr. Downer, if you please.

(The invoices are produced and handed to Mr. Stiles.)

Q. This is the invoice, is it, Mr. Rawson?

A. Yes; this is the invoice.

Q. What does that invoice show? Explain that, if you please.

A. That coffee was bought for gold—at gold prices; here is the amount of the Santos coffee.

Q. How many pounds does that show of the Santos?

A. 5,089, this says, at 17⅜ cents.

Q. How much would that be in currency?

A. Gold at that time was worth 41¼; I have not figured it up.

35 Q. I suppose you can do so?

Yes, I can do so. That is the New York prices in gold.

Q. How much does that invoice show there was of the Rio coffee?

A. 8,300 lbs. That's the net.

Q. How do you account for the difference between that difference and the weight you gave a few minutes ago; I think you gave the weight of the Santos at 5,140.

A. These shipments of coffee always overrun.

Q. They always weigh more at this end of the line than at the other?

A. Yes, sir; they always overrun.

Q. From what do you form your estimate of the number of pounds you received here. Did you weigh the coffee?

A. No, sir; we get it from the invoices; we don't weigh the coffee.

Q. Your invoices don't show that it weighed as much as you said?

A. The gross weight does; this is the net weight you have; the gross weight is 5,140, I suppose.

Q. The gross weight includes the bags?

A. Yes; we have to pay for the bags the same as for the coffee.

Q. You don't have to pay 26 cents a pound for the bags, do you?

36 A. Yes, just about that; we paid 38 cents apiece for the bags; the bags were included in this gross weight.

Question by Mr. Bordan.

Q. The coffee is sold here in bags?

A. Yes; resold by gross weight always. In selling a bag of coffee they always sell the bag with it.

Q. The price is based here upon selling it in that way?

A. Yes, sir; the sack is not taken in consideration at all; it is so much coffee—sack and all.

Q. I believe you have stated this came off the propeller in a wet and damaged condition?

A. Yes, sir.

And it was here admitted that the said defendant was a common-carrier at the date of the bill of lading, & also at the time of the loss, & since, & that said coffee was uninsured. Whereupon plaintiff rested.

And the defendant, to maintain the said issue on its part, gave in evidence to the jury the following testimony, viz:

Cap. Drake, a witness called on behalf of the defendant, was ex-

37 amined in chief by Mr. Stiles, and testified as follows:

Q. What is your occupation?

A. I follow the lakes.
Q. In what capacity?
A. Captain.
Q. How long have you been captain?
A. About 9 years.
Q. How long have you been on the lakes?
A. 18 years this summer, sir.
Q. In what different capacities have you served on the lakes?
A. Mate, second mate, and master, &c.
Q. How long have you been master?
A. 9 years.
Q. Do you remember where you was on the 31st day of August, 1867?
A. Yes, I do.
Q. Where were you?
A. Coming into Chicago.
Q. Were you at that time master of a vessel?
A. Yes.
Q. What vessel?
A. The propeller Buffalo.
Q. The propeller referred to by this last witness?
A. Yes, sir.
Q. Were you at that time master of the propeller Buffalo?
A. Yes, sir.
38 Q. State at what time you reached the harbor of Chicago.
A. About 8 o'clock.
Q. In the evening?
A. Yes, sir.
Q. How was the wind then?
A. Pretty nearly northeast.
Q. What sort of a wind?
A. Blowing fresh.
Q. How about clouds?
A. It was cloudy some.
Q. Well, sir, state what occurred at that time.
A. In coming into the harbor my vessel touched bottom, and she would not stear, and, in consequence, I stuck. My wheel being hard aport she would not answer her helm, and I got aground.
Q. This coffee that has been testified to, was that on board the propeller Buffalo?
A. Yes, sir; I believe so.
Q. State what happened to the propeller Buffalo, if anything.
A. We got down there and stuck. There was a tug a little west of us, and I hollored for her to come to us, but the sea was so high she could not reach us. She stayed there until she found she could not help us, and then went away.
Q. When did you get off the bar?
39 A. I believe it was on Monday.
Q. This affair that you have been testifying about was on the 31st of August, 1867, was it; what day of the week?
A. Saturday night, sir.
Q. You laid there from Saturday night until Monday morning?
A. Yes, sir.
Q. State whether or not any damage was done to the cargo.
A. Yes; she pounded all night, and she made more water than we could keep out with the pumps. We kept the pumps going all night,

and in the middle of the night I discovered she was making more water than we could get out with the pumps.

Q. What do you mean by that?

A. The water was coming into the vessel faster than the men could pump it out, and I started the men to bailing with barrels, and tried to manage to keep the water out until morning. A little before six o'clock there was three or four tugs came alongside to get of us.

Q. State whether you was also a pilot.

A. Yes; I was captain and pilot.

Q. Of what class?

A. First class, sir.

Q. You were pilot of the vessel at that time, were you?

40 A. Yes, sir.

Q. State what damage, if any, was done to the cargo of your vessel, the propeller Buffalo.

A. I could not tell what amount of damage.

Q. No; not the amount of damage, but what articles were injured, and whether any articles composing the cargo were injured.

A. Those articles that were in the hold were injured. The bigest part of the cargo in the hold were injured.

Q. Where was this coffee that has been spoken of?

A. In the forward hold, sir.

Cross-examination by Mr. Borden.

Q. Was it dark at the time when you came in?

A. It was dark, sir.

Q. Very dark?

A. Well, it was pretty dark.

Q. Cloudy?

A. No; I cannot say whether it was cloudy or not; it was thick overhead.

Q. You say the wind was fresh?

A. Yes, sir.

Q. How much wind is that?

A. Well, it is an ordinary gale; not a heavy gale.

Q. When had you been in the harbor of Chicago before?

A. Not since 1865, I believe, sir.

41 Q. Not before 1865?

A. No, sir; not since 1865.

Q. From 1865 up to 1867 were you not in the harbor of Chicago?

A. No, sir.

Q. Had you attempted to make the entrance before you signalled for a tug?

A. No; for I did not need one, sir.

Q. You did not signal for a tug?

A. No; because I did not need a tug. I had confidence in myself without any tug.

Q. What is the signal for a tug?

A. Well, we generally blow our whistle if we want one, sir.

Q. Is the channel of Chicago harbor—the entrance of the harbor there—a shifting channel?

A. Well, it is sometimes; when there is bad weather the sand sometimes shifts; it depends somewhat upon the wind.

Q. Does not the channel shift somewhat?

A. I follow the lakes.
Q. In what capacity?
A. Captain.
Q. How long have you been captain?
A. About 9 years.
Q. How long have you been on the lakes?
A. 18 years this summer, sir.
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A. Well, it is sometimes; when there is bad weather the sand sometimes shifts; it depends somewhat upon the wind.

Q. Does not the channel shift somewhat?

A. Sometimes there is less water than there is at other times, according to the state of the weather.

Q. But did not the bars shift and change from time to time in the channel?

A. Yes; they may change some, according to the wind; sometimes, when the wind is blowing fresh from the southeast, the sand comes in there.

Q. This was a sand-bar you got on, was it?

42 A. I don't know what you call a sand-bar, sir; but it was the head of the harbor.

Q. It was a bar, was it not?

A. Well, yes, a bar; there was sand there.

Q. Was there a great deal of sand around there?

A. Yes, sir; there was lots of it.

Q. As the wind veers around, it shifts on the channel more or less, does it not?

A. Sometimes it does.

Q. In a storm the channel changes?

A. Sometimes it does.

Q. Sometimes the channel changes after a single storm, does it not?

A. I have known it to change, sir.

Q. How wide is a propeller ordinarily?

A. I can tell you how wide our propeller was, sir, within half a foot. It was 28 feet, I think, or 28½ feet beam.

Q. About how much wider would be the largest class of propellers?

A. Some are 32 feet, some 33, and some 30.

Q. You say you stuck. How do you know?

A. Yes; I know by the handling of my vessel, sir. I must have touched bottom.

Q. Whereabouts was it where you must have stuck bottom?

A. It was about abreast of the light-house.

Q. Which light-house?

43 A. The small light; it was there I observed she would not steer.

Q. That small light is out at the end of the pier, is it not?

A. Yes, sir.

Q. How long had that been there?

A. That small light?

Q. Yes, sir.

A. I don't know exactly how long it had been there.

Q. Was it there in 1865?

A. I believe it was, sir.

Q. Then there is a large light-house further in?

A. Yes, sir.

Q. In what direction does that bar run?

A. I don't know exactly how it runs, but I suppose it runs pretty near east and west.

Q. I am speaking now of that——

A. I could not tell you, sir, how that bar runs.

Q. What would you say was the distance from that small light-house to the large one?

A. I could not say, sir; I could not say how far it is.

Q. Could you say about?

A. No, sir; I could not. I could only guess, it would be only guessing. I might guess more, and I might guess less.

Q. What kind of a light did the small light-house give?

A. Generally a red light, sir.
Q. It then carried a red light, did it?
A. Yes, sir.
Q. What kind of a light had the large lighthouse?
A. A bright light, sir.
Q. You think you touched bottom about south of the small lighthouse?
A. Yes, sir.
Q. How far out?
A. I don't know how far out they were I am sure, but they were there.
Q. Did you refer to the spiles that were put there with reference to building these docks that are now being constructed?
A. I could not say, sir, what they were being put there for. They might have been put there for that purpose.
Q. I ask you how near you went to the small light.
A. Well, I could not tell you how near I was to the small light. The distance I was off these spiles I can give pretty near by guessing.
Q. That is, you mean to say you was east of it; east of the red light out in the lake?
A. Yes, sir. Yes, sir.
Q. This bar lies about east and west?
A. Yes.
Q. And the small light was at the end of the pier, and there was some spiles to the eastward?
A. Yes, sir.
Q. Just state how far off they were?
A. They might have been 80 feet off, and they might have been more. I could not tell without guessing. It is only guess-work. I seen them distinctly.

Q. By the court. How far did you go after you first touched bottom before you stuck?
A. Well, sir, I don't suppose it was more than four or five lengths of herself. It might have been more. I could not say.

Q. By Mr. Bordan. In 1865, when you were here, those spiles that you spoke of were not there then, were they?
A. I think not, sir.
Q. You think the small light was there?
A. Yes, sir.
Q. How was the channel in 1868, when you were here?
A. Well, the channel in 1865 come pretty close up to the north pier.
Q. Good water close to the north pier coming in?
A. Yes, sir.
Q. How wide was the channel in 1865?
A. I don't know exactly how wide it was. It might be 150, and it might be 200 feet wide. I could not say exactly about that.
Q. Did you know where the bar was south of the channel in 1865?
A. Yes, sir; I believe I did know pretty nigh. I did not know exactly; perhaps within 50 feet.
Q. Did you ever test it?
A. No, I never did. I could not say positively where it was.
Q. Did you ever sound it there?
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Q. How wide was the channel in 1865?
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46 Q. Did you know where the bar was south of the channel in 1865?
A. Yes, sir; I believe I did know pretty nigh. I did not know exactly; perhaps within 50 feet.
Q. Did you ever test it?
A. No, I never did. I could not say positively where it was.
Q. Did you ever sound it there?
A. I made some soundings there.

Q. You never sounded the channel for the purpose of ascertaining accurately where the channel was?

A. No, sir.

Q. Did you have any chart in 1865, showing where the channel was?

A. We generally got draughts from the harbor-master where the water is.

Q. When did you get them?

A. Generally in the spring, sir.

Q. Did you get a chart from the harbor-master, and did you have one at the time this accident occurred?

A. No, sir; he notifies us through the paper generally about where the channel is, and how to come in, and where the water is, and all about it.

9. So that it is some general statement, without its being exactly correct?

A. I guess they sound the channel and find out themselves. I have no doubt they do.

47 Q. You think the channel 100 feet wide from the north pier southward in 1865?

A. I could not tell only by guessing. It might be 150 feet, and it might be 200 feet. I don't suppose there are any persons that measure it; they go by guessing.

Q. Now this bar that you got on to, what about that?

A. It was a bar that I got on to. It was the head of the harbor.

Q. It was a shoal place outside of the channel that you got on to?

A. Yes, sir.

Q. Where your vessel stuck?

A. Where I brought up, sir.

Q. By the court. Inside the pier?

A. Yes, a little inside the pier.

Q. Now, as I understand you, you were here when you touched bottom?

A. Yes, sir.

Q. You went up towards the pier and then she would not mind her helm and went across the channel and got on to this sand bar, as I call it?

A. Yes, sir.

Q. The wind was from the northeast; from a quarter that would blow her over there?

A. The wind was from the northeast.

48 Q. Of course the bar being east and west, the channel ran in what direction?

A. Coming in?

Q. Yes, sir.

A. The channel was right straight in.

Q. Then you say the channel was east and west too?

A. Yes, pretty near, sir.

Q. Then a strong wind from the northeast, the broadside of your propeller would be towards the wind?

A. Yes, sir; at an angle.

Q. She touched there, and losing control of her she drifted across the channel, and got on to this bar?

A. Yes, sir.

Q. Your vessel, I suppose, was a staunch, good one?

A. Yes. We had her on the dry-dock at Buffalo, and anything she wanted doing to her was done.

Q. She would stand a storm of that kind pretty well, would she not?
A. I think so.
Q. How much water would she draw?
A. About 11 or 12 feet.
Q. Can't you state exactly?
A. I could not, sir, for the wood was torn off. I could not tell exactly how much water we did draw. We drew between 11 and 12 feet. It might have been a little over 11½ feet; I could not tell exactly.
Q. Six inches would amount to considerable.
49 A. Yes, I know it.
Q. You don't know then exactly what your vessel did draw within six inches?
A. No, sir, not within five or six inches.
Q. In 1865 were you familiar with the channel?
A. Yes.
Q. And you think it was 150 feet wide, or so?
A. It might have been.
Q. Running straight in a parallel line with the pier?
A. Not exactly straight in 1865; it was a little closer to the north pier in 1865.
Q. By Mr. Stiles. Capt. Drake, you stated in your testimony that you were familiar with the Chicago harbor; won't you tell the jury how the ranges were at this time?
By Mr. Borden. I object unless the witness depends on some other source then hearsay for his information.
Q. By the court. How did you ascertain?
A. Before I came up I ascertained from the captain of the Mohawk. He told me how to get in before I came here, and about the water, and all those things. He said there would be no trouble in getting in whatsoever.
By Mr. Borden. Now, I object to the question.
Mr. Stiles. I withdraw the question.

50 J. W. Turttle, a witness for the defendant, being duly sworn, was examined in chief by Mr. Stiles, and testified as follows:
Q. What is your occupation?
A. Agent for the Western Transportation Co. now.
Q. What was your former occupation?
A. I was mariner twenty-two years.
Q. On what waters.
A. Between Buffalo and Chicago.
Q. In what capacities?
A. Well, in that time I was in all capacities, from cook to captain.
Q. How long were you captain?
A. Seventeen years.
Q. State whether you are familiar with the harbor of Chicago.
A. Perfectly.
Q. For how long have you been familiar with it?
A. Fifteen years.
Q. State whether you know the circumstance attending an accident to the Buffalo on the night of the 31st Aug. 1867?
A. I know something about it.
Q. Will you state the circumstances to the court and jury as far as you know?
A. On the night of the 31st of Aug., or on the afternoon of the 31st of August, about three or four o'clock, a strong breeze came up

51 from the northeast, and continued to blow during that night and the next day.

Q. At what time did that breeze commence?

A. It commenced here about three o'clock, Friday. The weather was very bad, cloudy and dark in the night. About half past eight o'clock I was advised that the Buffalo was ashore on the bar. I at once took a tug and went down to see what could be done about getting her off. The sea was quite heavy—so heavy that we could not approach her near enough to have a talk with the capt. It was on the lee side of the channel. After bobbing about there for about half or three-quarters of an hour, and found it was useless to stay out any longer, and then we come in. The next morning I was up at day-light, and was out with four tugs to help her off. The sea had run down in the mean time. The wind had abated some. We tried with the tugs to pull her off. We worked an hour or an hour and a half and gave it up. The captain informed us she was leaking badly. I came into the harbor with the four tugs and got a smaller tug and went to see if I could get close to her to talk to the captain to see what the condition of the vessel was. It was then 9 o'clock, Sunday morning, the first day of September. The captain told me she was filling and the fires were out in the furnauce. I ad-

52 vised him to what he could to preserve the cargo, and I would be up as soon as the weather would permit with lighters to get her off. In the morning we commenced to get her off. On Tuesday at 11 o'clock we saved all the cargo we could. This coffee in controversy composed part of the cargo.

Q. Was it on board the propeller at that time?

A. 'Twas on board the propeller.

Q. Captain, state whether you were familiar with the ranges of the Chicago harbor in 1865.

A. Yes, sir.

Q. State whether you were familiar with the ranges on the night of the 31st of Aug. 1867.

A. Yes, sir.

Q. State how they would compare for those two years.

A. They didn't change materialy. There was a sleight alteration caused by the changing of the sand.

Q. What kind of a wind was this blowing from the northeast?

A. It was a bad night; it was a gale of wind Saturday night; it was so bad that almost any man would like to seek a harbor.

Q. State whether or not the wind hat increased from 6 o'clock to 8 o'clock.

A. Yes, from that until 11 o'clock.

Q. State if you know of any vessels coming in harbor that night.

53 A. The propeller Mohawk came in about eleven o'clock—half past ten or eleven.

Q. Do you know how much water she drew?

A. Eleven feet nine.

Cross-examination by Mr. Bordan.

Q. Captain, how do you know about the location of the channel, as you stated?

A. I go out some twenty times a year. It is my business to keep watch of the channel, and advise our captains if there is any change. I have done this for five or six years passed. I expect to do it now very soon again.

Q. Do you go out there and take the soundings?

A. Yes, sir.

Q. Do you take them in the spring?

A. I take them at different times of the year. I take them always in the spring.

Q. Do you know where Captain Drake had been between the times he mentions in 1865, when he was here, and 1867, when he came in with this propeller?

A. I think some part of the time he had been running a tug in Buffalo, and some part of the time he was master of one of the lower lake boats of the Western Transportation Company, but when he is not here I cannot tell what he is doing. I understood he was in the employ of the company somewhere.

54 Q. This was his first trip in the employ of the company in this direction?

A. That year; yes, sir, 1867.

Q. Were any sailing orders giving him as far [far] as you know before starting from Buffalo?

A. Not that I know of.

Q. You say there was no considerable change as far from 1865 to 1867 in the channel?

A. Yes, that it was what I said. There was very little changes in the ranges coming in.

Q. In 1865, I understand, the water was good next to the north pier?

A. I don't know what you might have understood the captain to say.

Q. Was that so?

A. Very close to the north pier; south it was not so all the distance in. There are places where the water is bold, and there is other places where the sand is washed in from the fact of there being an opening in the north pier.

Q. At the bust or at the end of the north pier, how is it?

A. It was good; not close to, but as close as a vessel would want to go. The tendency of a vessel is to broach, not to fall off.

Q. Extending how far in from the end of the pier was the water good along next to the pier?

A. There was a short spit out between the two lights.

55 Q. How near the small light did it extend?

A. Well, I should think within 150 feet it might have commenced.

Q. There was a hole where the water washed through?

A. Yes.

Q. And this hole caused the sand to appear where you speak?

A. Yes, there had been a hole at the end of the pier, the old pier.

Q. Which had kept the spit from falling out as far as the breast?

A. The hole had allowed some sand to wash in.

Q. And that was outside of the light?

A. Yes, sir.

Q. After that hole was mended, what effect did it have upon the spit?

A. The spit did not fill any more of any account. There was always more or less sand. After a few months a man might discover a little difference in the soundings.

Q. Now this spit, as I understand it, was a bar of sand, being just south of the north pier.

A. Yes, sir.

Q. Where did it begin with reference to the large light?

A. Between the two, nearer the large light.

Q. Then extended eastward about how far?

A. Maybe 150 feet, and maybe 200 feet.

56 Q. What is the distance from the large light to the small one?

A. Well, that would be an estimate; somewhere in the neighborhood of 400 feet. I rather think it is more; something like that.

Q. The balance of the distance then over 150 feet, from the large light towards the small one, it was good water in 1865. You say the spit commenced about abreast the large light, and extended 150 feet; is that correct?

A. Well, I can't tell you exactly how far it extends.

Q. How near to the small light did that spit extend in 1865?

A. I should think within the neighborhood of 150 feet, when we understood the water was shoal we did not follow it very close. We find out where the channel is generally.

Q. After this hole in the pier was mended, and Ogden commenced working on this extension, how was the spit?

A. I understand since the extension was made there, before the gap was shut up, some sand came through. At any rate, this last year we find it necessary to keep away to the south'ard in coming in. Our course in coming in is west by north half north.

Q. Do you refer to the change that took place between the fall

57 of 1865 and August 1867, when this accident happened?

A. You asked me about the effect this pier had, and this pier wasn't made then.

Q. Capt. Drake said a portion of it had been commenced then, the spiles?

A. The spiles were there, but there was not much of a pier there.

Q. How was that spit in 1867?

A. There was some spit there.

Q. How far eastward did it extend?

A. I have answered that the third time; it was within 150 feet of the light.

Q. I understood that was in 1865?

A. It was in 1867 too. I could not tell you exactly, in feet, how far it was. We try to trace out where the water is, but never make a measurement in feet.

Q. I understand then that there was 150 feet outside of the small light-house, where the water was good up to the pier?

A. I say about that; it might have been more, and it might have been less. The water was good inside the small light, but just exactly how far this way we have not had occasion to go. We run on our ranges.

Q. How close to the north pier was this spit?

A. It was right at the north pier where it commenced.

Q. And extended how far south?

58 A. Well, 150 feet before we got into the channel; it might have been 125 feet; a man has to trust to his eye; we don't take a tape line and measure.

Q. How was the water on this spit?

A. Some places we had nine feet, and some places ten, and some places seven, and some places 11, varying. In a gale the water was sometimes 13 feet. The water is certain to be a foot or a foot and a half deeper then, and that is the safety in coming in.

Q. How wide was the channel?

A. Well, in the neighborhood of 170 to 200 feet.

Q. Was this spit of a uniform widith for the distance that it extended?

A. No, sir; it was narrower at the point south. We keep further south until we get within the channel. I did not trace it out to see how far it extends this way. We don't pay so much attention to the spit as to the channel.

Q. Where did it extend the furtherest south?

A. Between the two lights.

Q. Which end of the spit?

A. I should think nearly the center.

Q. How much further did it extend south at that bend than it did elsewhere?

A. It was a sort of an oval shape, commencing from the big light and making its detour south and around this way up to within 150
59 feet or so outside the small light. There was a spit there from some cause. It was enough to know we found it there.

Q. The difference that it was between its narrowest and widest place was how much?

A. Of what?

Q. Of this spit.

A. I have told you I thought the form of the spit——

Q. You think it is an oval, but you do not tell us where the difference is in width?

A. Mark out an oval shape 150 feet by 200, and you will see about what I mean. We have not examined the spit so thoroughly as we did the channel.

Q. I believe you stated, captain, on a former examination, that with a storm blowing in the direction as it did then, it was a hap-hazard business coming in there?

A. Well, I believe not; there is always danger in entering a harbor in a gale of wind. Any man that has had any nauticle experience knows that. You start in, for instance, and it depends where the sea happens to leave you. It may carry you over or it may leave you on the bar.

Q. It is very risky to venture to come in?

A. No, sir; a vessel rarely strikes but once, and they are over the shallow spot and into safety, and that is the idea in coming in.
60 It is better to take that risk than to stay outside in a gale of wind in the night.

Re-direct examination by Mr. Stiles.

Q. Captain, you said the tendency of a vessel was to broach rather than fall off?

A. Yes, sir.

Q. Won't you explain to the jury what you mean by those terms? What do you mean by broaching, and falling off? Explain it so that the jury will understand your statement.

A. The tendency of a vessel in entering a harbor is for her head to come to the wind and the wheel must necessarily be put to the starboard to keep her off. The tendency is not to drift to the leeward, but to work to the windward; that is, if she is clear of the bottom.

The defendant here rested on the evidence.

Captain E. W. Steel, a witness called on behalf of the complainant, being duly sworn was examined in chief by Mr. Borden, and testified as follows:

Q. What is your business, captain?

61 A. My business is harbor-master at present.

Q. How long have you been such?

A. For the past two seasons, 1867 and 1868.

Q. Will you state to the court and jury how the channel was here in Aug., 1867, in entering the harbor of Chicago? Do you know how it was?

A. I have drawed out a rough sketch here, in a few minutes, as near as I can come at it. There was a spit made down here from the north end of the north pier. You had to keep down to the south'ard a little, past the range of the center of the harbor.

Q. Now this represents the north pier running out here?

A. That represents the north pier.

Q. Here is this large light spoken of?

A. Yes, sir; this is the large light.

Q. And out here is a small light?

A. That is the small light.

Q. Here is the pier and this is a bar here, about?

A. Yes, sir; it runs out about east, nearly.

Q. And this, then, tends to the northward?

A. Yes, sir; it bends to the northward from the big light.

Q. Where was this spit?

A. This spit reached out from the end of the north pier, bearing about southeast. It started in up north of the pier aways. It run out

62 to the pier about southeast.

Q. How far did it extend down in that direction from this small light?

A. It must have been between 200 or 300 feet, bearing southeast pretty well into the lake.

Q. When was that spit formed there?

A. Well, it must have been there more or less for the last 3 years. In the spring of 1867 it made out a little more than it did the season before. Last spring it was down still further.

Q. How much of it was there there in the fall of 1865?

A. Well, there was not near as much there; there was some. You had to keep near the pier somewhat. You had to follow the north pier and keep off some little distance.

Q. In other words, there was good water pretty near to the pier?

A. Yes, sir; well, within probably 75 or 100 feet.

Q. And the balance of it was made afterwards?

A. Yes, sir.

(Counsel takes diagram and explains it to the jury.)

Q. In the fall of '67, how far was this spit from the pier?

A. We had to keep off, I should suppose, 300 f't; 250 feet anyway. I never measured the exact distance.

63 By the court. Keep off of which pier?

A. From the north pier.

Q. How much of that change took place, if any, during the summer of 1867?

A. It kept making out gradually; I don't think it changed much of any between the spring and fall.

Q. How much was made in the winter of 1866 and 1867?

A. Most of it was made in the winter of 1866 and 1867.

Q. Were you harbor-master during the season of 1867?

A. Yes, sir.

Q. When did you take the office?

A. The 1st of May, 1867.

Q. You made an examination of this harbor at that time, I suppose, did you not?

A. I sounded it several times during that season.

Q. Previous to that time were you acquainted with the channel?

A. Yes, sir.

Q. What was your business previous to that?

A. I have been master of propellers for the last 15 or 16 years previous to that time.

Q. Captain, here is a break-water which extends out here, is there not?

A. Yes, sir.

64 Q. It is shoal water all along here, is it not?

A. Yes, sir.

Q. Does it get deeper after you got over this bar here, towards the break-water?

A. I think after you get down to the break-water it is deeper than it is here.

Q. What is the depth of the water in the channel here; what was it in 1867?

A. It was 14 feet in the channel in an ordinary stage of water.

Q. How wide was this channel at that time?

A. Between the bar and the buoy?

Q. There was a buoy there, was there?

A. Yes, sir.

Q. Well, between this spit here and the buoy, how wide was this channel?

A. Well, I should judge it was over 100 feet wide; the channel here between the spit and the buoy. The channel might have been 150 feet wide, not over 100 where there was 14 feet of water?

Q. Is that the narrowest place, captain?

A. Yes, sir. Well, it is no narrower there than it is when you get up near the pier. That is the narrowest place in the channel there, (pointing.)

65 Cross-examination by Mr. Stiles.

Q. Captain, you stated this didn't make from spring until fall. What do you mean by that?

A. It didn't make much of any between spring and fall.

Q. Of what year?

A. Of 1867.

Q. When did you first make soundings, what year?

A. 1867.

Q. You didn't make any in 1865 and 1866?

A. No, sir.

Q. In what year was most of this made; this spit or bar?

A. It was made in the winter of 1866, I think, the most of it.

Q. You didn't sound it in 1866?

A. I didn't; no, sir.

Q. Is it not true that most of it was made in 1868?

A. Most of it was made in the winter of 1868; that is, the present pier.

Q. Now, were you familiar with the ranges in 1865, in entering the harbor?

A. You could come straight in.

66 Q. Had the change been very much from 1865 to 1867, in coming into the harbor?

A. Well, the ranges had changed some, but not much.

Q. You stated that the depth of water ordinarily in the channel was about 14 feet in that year?

A. Yes, sir.

Q. The depth of water depends upon the wind and weather a great deal, does it not?

A. Yes, sir; with a northeast wind the water is higher, and makes more water in the channel.

By Mr. Borden. The changes you have stated here were up to 1867, in your direct examination?

A. Yes, sir.

Q. This other change that has been made since was greater?

A. You have to go still further; we did last year. This last spring we had to go down so as to shut in the south pier before entering.

Mr. Morrison, a witness called on behalf of the complainant, was examined in chief by Mr. Borden, and testified as follows:

Q. What is your business?

A. Tugman.

Q. Here in Chicago?

A. Yes, sir.

67 Q. What was your business in 1867?

A. Tugman.

Q. In 1866?

A. Tugman.

Q. Are you familiar with the harbor of Chicago?

A. Yes, sir; I run out and in pretty often.

Q. There is a spit out at the entrance of the harbor, next to the north pier, is there not?

A. Yes, sir.

Q. Whereabouts does it lay?

A. It is between the foot of the old north pier and that Ogden pier, as they generally call it, right in the gap there.

Q. Where was it in Dec., 1867?

A. Well, it was inclined to run off to the southward and eastward.

Q. Southward of what?

A. Southward of the old north pier.

Q. Whereabouts with reference to the small light at the end of the pier?

A. It lay to the southward; southward and eastward; south by east.

Q. How did it make between the fall of 1866 to the fall of 1867?

A. Well, in 1866 we used to run schooners in there pretty close to the pier—I should judge within about 50 feet; and in 1867 I noticed

68 it had filled in there considerable. We used to keep, I guess, about 100 feet, as near as I could judge, from the pier. I am only guessing at it; but, as near as I could judge, about 100 feet from the pier. Last year we used to keep still further off. It is making every year.

Q. How much water do these schooners draw?

A. Some of them draw 12 feet, some 11 feet, some 12½, and so on. We have some schooners 12½ feet.

Q. These propellers that run on the lakes here, do they lie off the harbor sometimes?

A. Well, once in a while they do. In a big gale they come in generally. I know of one that always does it pretty much. She has a big draught of water. When there is too much wind she lies off generally outside until the sea goes down a little.

Cross-examination by Mr. Stiles.

Q. You say you are a tugman?
A. Yes, sir.
Q. How much water does your boat draw?
A. She is a tug that draws 7 or 8 feet.
Q. How much does an ordinary propeller draw, loaded?
A. That I can't say.
Q. Well, about how much? You are a seaman, are you not?
A. Some draw ten, eleven, and eleven and a half feet. I won't
69 be positive I have seen any loaded down to twelve feet.
Q. With your boat you can go most anywhere?
A. No, sir; the boat I was on we could not run over this spit the gentlemen have referred to.
Q. You said one propeller laid out sometimes; what propeller is that?
A. The propeller Alleghany.
Q. What position on the tug do you hold?
A. Linesman, sir, and captain.
Q. How long have you been captain?
A. This last year.
Q. What was your position in 1867?
A. Linesman.
Q. By a juror. When a pilot has not navigated the channel for two years, would you consider it hazardous to attempt to bring a propeller in during a strong gale?
A. Yes, I should.
Q. By Mr. Stiles. Do you consider yourself competent to answer that question?
A. Which, to bring a boat in?
Q. Yes.
A. Yes; I should say it was, if a man has not been in for two years. I should say he should haul off until he could get a tug. It is pretty risky.
Q. Supposing he could not get a tug?
70 A. He should let go his anchor, or lay off and on until he could get a tug.
Q. There is considerrble hazard in entering Chicago harbor at any time during a gale; is there not?
A. No, sir; the channel is wide, and there is a good draught of water there.

H. K. Faith, a witness called on behalf of the complainant, being duly sworn, was examined in chief by Mr. Bordan, and testified as follows:

Q. What was your business in 1865 and 1866?
A. I was harbor-master in 1865 and 1866.
Q. What was your business previous to that time?
A. Master.
Q. You sailed propellers?
A. No, sir.
Q. Vessels?
A. Yes, sir.
Q. Running to Chicago, here?
A. Yes, sir.
Q. Propellers coming down the lake, and arriving here in the night, and the wind coming from the northeast, do they not usually lay to outside the harbor?

A. There has been propellers laying off here, that draw a large
71 draught of water, when it was blowing hard.

Q. You have heard what Mr. Steel and Mr. Morrison said about this spit?

A. Yes, sir.

Q. Have you been acquainted with the harbor since you left the office of harbor-master?

A. Yes; I have sailed vessels out here since, and do now, in the summer time.

Q. What change took place in that spit from the fall of 1866 to the fall of 1867?

A. Very little change took place in the spit between 1865 and 1867. There was nothing but the spiles there in 1865.

Q. Your term of office expired the 1st of May, 1867?

A. Yes.

Q. Did you make any soundings after that?

A. No, sir; I had no occasion to make any soundings after that. I made some for two years, when I was there, every spring.

Q. Your soundings were made in 1866?

A. I made them in 1866 and 1865. I took the soundings myself.

Cross-examination by Mr. Stiles.

Q. You sounded the harbor in 1865 and 1866?

A. I did.

Q. You went out of office in 1867?

A. Yes, sir.

72 Q. At that time you were harbor-master of Chicago?

A. Yes, sir.

Q. At the time you went out of office was this spit there as represented on this map?

A. I think it was a little more south.

Q. Well, sir, when did that make, if you know; in what year mainly?

A. It was made when I went into office; we found 10, eleven, and sometimes more: 8, 9, 10, and 11 feet.

Q. When did you note this?

A. In 1865.

Q. What changes have taken place during that time, from 1865 to 1867?

A. Well, very little change; there was very little differnce in the ranges coming in.

Q. The ranges were about the same in 1867 that they were in 1865?

A. Yes; I had the newspapers copy the soundings. I had a man on one side, when I made the soundings, and I was on the other, and we sounded both sides of the boat, and we sounded thoroughly too.

Q. In 1866 you sounded the harbor thoroughly?

A. Yes; it was my business to do so.

Q. By Mr. Borden: You made your soundings in the summer of 1866?

A. In the spring of 1866.

73 Q. You made no soundings from the spring of 1866, afterwards?

A. Yes; I have gone out some four or five times to make soundings, and sometime when I was out I took a pole and made soundings too.

Q. That was in 1866, when you was harbor-master?

A. Yes; and in 1865 too.

Q. By Mr. Stiles: Do you know Capt. Drake?

A. No, sir; I never saw the man, to my knowledge—only once; I never spoke to him before I spoke to him here.

Plaintiff rests.

Capt. J. W. Brett, a witness called on behalf of the defendant, being duly sworn, was examined in chief by Mr. Stiles, and testified as follows:

Q. What is your occupation?

A. Mariner.

Q. How long have you been so?

A. I have been on the lakes since the spring of 1838. I have sailed since the fall of 1830.

Q. Are you familiar with the harbor of Chicago?

A. I am, sir.

Q. What capacities have you acted in since you have been on the lakes?

74 A. I have been from before the mast to master.

Q. How long have you been master?

A. I have been master since 1844.

Q. Won't you look at this diagram? (handing witness a diagram.) State whether you were, during 1865, and from that to 1868, familiar with the harbor of Chicago.

A. Yes, sir; I was running here regularly.

Q. On what vessel are you master?

A. I am master at present of the propeller Colorado.

Q. Has she any connection with the defendant in this suit?

A. No, sir.

Q. Will you state all the changes there have been in the harbor with reference to the spit, from 1865 to 1868?

A. Well, in 1865, we used to run nearer to the north pier than this spit is laid down now; and in 1867 that spit was not so far as it is now. We used to take a range in very nearly one-third of the distance of this north pier and then go straight out; that carried us in about the best water. That was about the channel in 1867. In 1868 we had to keep further to the southward.

Q. How was it in 1867?

A. In 1867, I say that was about the range of the channel.

75 That spit was not so far southward as it is marked here now.

Q. State, with reference to the difficulty of coming in, from 1865 to 1867, and what changes, if any, have taken place during that time.

A. There was but little difference; the best water was almost directly straight in.

Q. What do you say about the hazard of coming in to Chicago during a gale of wind, such as has been described and testified to here in this case? The question has been asked, of different witnesses, as to the hazard of coming into the harbor under such circumstances. Will you give your opinion?

A. In a very severe gale of wind, and drawing all the water there was on the bar, I should not attempt to come into the harbor of Chicago.

Q. In such a gale of wind as there was that night, how would it be?

A. I should not hesitate about coming in at all in such a gale of wind. I was coming up Lake Huron at that time.

Q. What do you say about the hazard of coming into the harbor of Chicago; whether or not there is some hazard connected with it?

A. Yes, sir, there is some hazard connected with it; there is always

more or less danger in coming into the harbor in a gale of wind.

76 Q. It is a pretty dangerous business, is it not?

A. It is pretty dangerous business generally.

Q. You say there was very little change from 1865 to 1867 in the lay of the spit?

A. This spit was laid down a little more to the southward; but not so far as it is in this sketch.

Q. You laid off in the winter, did you not, captain?

A. Oh yes, sir.

Q. Now, from fall to spring, if there are any changes in the lay of the harbor, where do you get your information how to come in?

A. We most generally see the facts published in one of the Chicago papers, by direction of the harbor-master, whether there have been any changes in the channel, and we are guided by that statement.

Q. Is the Chicago harbor a difficult harbor to enter?

A. It was more so last season than it has been previously. It was a very difficult one when we used to run to the southward some years ago.

Q. Do you know Captain Drake?

A. Yes, sir; I have known him for these six or seven years.

Q. Are you acquainted with his character and standing as a seaman?

A. Yes, sir; it has always been considered good, as far as I

77 have known. He has always been regarded as a competent man.

Q. How long have you known him?

A. I think it is about 6 or 7 years since I first knew anything of him.

Cross-examination by Mr. Borden.

Q. This plan, captain, is not made out on any scale. It is a mere sketch to give a general idea of the channel, and the outline of this spit. Now, this spit changed some between the fall of 1865 to the fall of 1867?

A. Yes, sir, it might some.

Q. In the fall of 1865 you run pretty close to the north pier, did you not?

A. We could run closer to the north pier than we can now, if it was necessary to do so. There was no particular occasion to run very close. There was good water clear in to the north dock, which was indicated by the soundings. We never got our information from any other source except the means I have mentioned.

Q. You only derive your information from hearsay; that is, from the published statements of the harbor-master?

A. Yes, sir; that is the way we derive our information with

78 reference to going out or entering the harbor. Sometimes we used to run out drawing 14 feet of water occasionally?

Re-direct examination by Mr. Stiles.

Q. Do I understand you have drawn 14 feet of water?

A. I have drawn 14 feet of water with the propellor Colorado, in 1867, in going out of here.

Q. Your information was based upon the reports given by the harbor master?

Q. Yes, sir; in the spring of the year. During the season of navigation I could get further information from other sources.

Q. What would you say was the width of the channel here, and the depth of the water on the spit?

A. Well, I should think, in 1867, there was nearly 200 feet of channel there. Last year there was not so much.

Q. You say if a vessel was heavily loaded you would not come in under such circumstances as have been stated?

A. If I was drawing all the water there was in the channel I would not have attempted to come in.

Q. What would you have done?

A. I would have stayed outside if I had fuel enough to keep
79 up the fires; otherwise I should come to anchor.

Q. How is the anchoring ground outside the harbor of Chicago?

A. The anchoring ground is considered very good, but there is always some risk in coming to anchor. A propellor don't lay very good at anchor; she sheers off first one way and then another; she rolls and labors very heavily. There is a good deal of danger of damaging the cargo by the rolling of the boat.

Q. How would it be to put the vessel's head to the wind, and lay off and on?

A. If you can keep her head to the wind, and keep steerage way on her, she will do very well.

Q. North of the harbor, for some distance, 6, 8, or 10 miles, the lake is shallower than it is in the open lake, is it not?

A. It shallows gradually right off from the beach.

Q. And the water being shallower, does it not make it smoother than it would be otherwise?

A. It breaks the seas up some.

Q. So that a vessel could lie off and on very easy if so disposed?

A. Yes, sir.

Q. Have you ever laid off and on this harbor?

A. I have never had occasion to, sir; not for bad water. I have laid off and on for a fog.

80 Q. You have been sailing here continually?

A. I have been sailing here since 1838, and I have sailed vessels and steam craft.

Q. You say that your vessel was drawing 14 feet of water when heavily loaded, occasionally, when you have gone out of the harbor, and you never thought it necessary to lay off and on when coming in here?

A. No, sir.

Q. What would be the objection to laying off outside?

A. There would be no very great objection, without it was not very heavy, and then, as I said before, a propeller would roll considerable, and that damages the cargo. A propeller rolls and labors very heavily, and there is a risk of damaging her cargo.

Q. Take a case where the wind commences to blow from the northeast about 3 o'clock, and increases on Saturday until 11 o'clock, what, in your opinion, would be the expediency of coming into the harbor of Chicago?

(Objected to.)

Q. Do you know what the wind was at that time?

A. I was on Lake Huron at that time, sir, so I couldn't tell what it was here.

Q. What do you say to that question I have just asked you?

81 A. It has got to be a very dark night when you can't see your way into Chicago. You can see the lay of the piers most any night, and warehouses "A" and "B" of the Illinois Central railroad show very distinctly, because the lights are to the westward of them. You can see the range of the piers on a very dark night if it is not foggy.

Q. One of the tugmen asked the question whether a man who had

not been here for two years, and should arrive off the harbor of Chicago in a gale, such as has been described, and attempted to enter, whether it would not be attended with a great deal of hazard. I wish to ask you whether or not, in case the captain of a propeller who had received information from the usual sources, and had made inquiries of other captains in reference to the harbor, his attempting to enter the harbor of Chicago would be attended with any particular risk?

(Objected to.)

Q. State whether, under such circumstances as I have mentioned, having been advised of the lay of the harbor by another captain, and having read the published statements of the harbor-master, you would consider it any particular risk to attempt to enter the

82 harbor?

(Objected to. Objection overruled. Exception by plaintiff.)

A. I would not hesitate to come in, drawing that amount of water, with a hard gale of wind.

Q. And under the circumstances which I have stated?

A. Yes, sir.

Re-cross-examination by Mr. Bordan.

Q. You have been sailing here for a good many years, captain?

A. Yes, sir.

Q. And would not be misled by any false lights, or any changes in the lights which might take place?

A. No, sir.

Q. Do I understand you to say that, if you had not been here for two years, and you should arrive off the harbor on a night like this, which has been described with the wind blowing as stated, you would not hesitate to come in?

A. Not if I had the information that was necessary before I started.

Q. That is to say, if you had been correctly told?

83 A. Yes, sir. Knowing the way the harbor was situated, I think I could obtain information from others so that I could come in without any difficulty.

Q. A propeller stands above water a great deal, does she not?

A. Yes, sir.

Q. And is liable, consequently, to be seriously affected by the wind?

A. Well, not so much so as when she is pretty well down in the water; from 10 to 12 feet down in the water.

Q. Well, she is a great deal more affected than an ordinary vessel, is she not?

A. No, sir; a vessel that is under canvas is as liable to be affected by the wind as a propeller. She can't come in without sails, unless she is a tug.

Q. A propeller has a cabin above water, and really two decks above water, has she not?

A. Yes, sir.

Q. How much does she stand out of water?

A. She stands out of water about—well, that would be pretty hard to answer. Probably from the load line to the top of the cabin would be about 22 feet. Some may be more, and some may be less. There are different heights between decks, and different heights of cabins on propellers.

Q. Where would you make the turn in coming down the lake?

84 A. Anywhere outside the end of the north pier; anywhere that there would be room enough to turn in.

Q. How long is it from the end of the pier here until you get inside the harbor, substantially?

A. Get in past the end of the south pier?

Q. Yes.

A. I never measured the distance. I should think it was somewhere about 1,000 feet.

Q. You do not consider yourself fairly inside the harbor, do you, until you get into the mouth of the river?

A. No, sir; not until we get between the two piers.

Q. How wide was this channel here in 1867?

A. I should think there would be about 200 feet of channel there—not so much as that—in 1867, and previous to 1867; I should not think there was more than 150 to 175 feet in 1867.

Q. And here was the shoal, south of the channel? (indicating.)

A. Yes, sir.

Q. And in a storm blowing from the southeast it was very rough on that shoal, was it not?

A. Yes, sir.

Q. And if a vessel went on to that shoal it was certain to be wrecked?

A. Not in all cases, but should be apt to receive a good deal of damage.

85 Q. There would be a high probability that she would spring a leak?

A. If it was blowing pretty hard, the probability is that she would spring a leak.

Q. If she should get over the sand bar, the first thing she would meet with then would be the breakwater, would it not?

A. I don't know.

Q. Well, there is the breakwater, is it not? (referring to the diagram.)

A. If she should get over the bar, she might let go her anchors, and hang on.

Q. Vessels have gone on to breakwaters, haven't they?

A. Oh, yes, sir; but it is not a very good place to ride.

Q. Would it not require some pretty nice calculation, with the wind blowing as stated by the witnesses here, and in the night, and under all the circumstances which have been detailed, to attempt to enter the harbor?

A. Yes, sir; it would require some pretty nice calculation.

Q. And in the night you can judge correctly as to where you are?

A. Pretty nearly so.

Q. How nearly?

A. Well, within 25 or 30 feet.

86 Q. You can judge within 25 or 30 feet of how you are. Does not 25 or 30 feet make a good deal of difference?

A. Yes, sir; it might make a considerable difference.

Q. How could you place your vessel exactly where you wanted to go in on a night like that?

A. Oh, you could see to place her as near right as would be practicable, and as near right as would be required.

Q. In coming in, if you get started in with your vessel, and you should touch bottom, and you should make a miscalculation, and get in the wrong place, owing to some mistake of judgment or some miscalculation as to where you were, and should touch bottom, would you not then be liable to lose control of your vessel?

A. Well, some vessels act differently in shallow water from others. Some vessels, when they get into shallow water, you can't control them

at all. Others don't mind it much; they will answer their helm very readily. I have seen propellors that you could hardly perceive that they were in shallow water at all, and others that you couldn't manage.

Q. If a propeller touched bottom, she would be in a dangerous place, would she not, and be liable to be lost control of coming in in this way?

87 A. As I stated before, with some propellers it would be dangerous, and with others it might not be.

Q. For instance, if the stern or bow should touch, she would tend to revolve?

A. If the stern should touch heavily, so that she dragged pretty hard, then the bows would fall off, if you was drawing less water forward than aft.

Q. Ought a vessel drawing less water than say 11½ feet, coming in in an ordinary gale of wind, such as has been described here, ought she to strike bottom, if perfectly navigated, in the fall of 1867?

A. Well, if she was right in the channel I don't think she ought to.

Q. The wind from that quarter raises the water?

A. Yes, sir.

Q. About how much?

A. Well, it raises it from a foot to a foot and a half; it would depend upon how long it was blowing somewhat. In the fore part perhaps, when the wind first comes up, the water rises; but afterwards it sets back again, after it has been blowing some time.

Q. It has been testified here that there was 14 feet of water on the bar, how is that?

A. I have gone out drawing 14 feet of water.

88 Q. Now, would it be likely that if a vessel was properly navigated, she could go out drawing 14½ feet of water without striking bottom, in 1867?

A. Well, it would depend altogether upon how rough it was. If it was very rough she might possibly strike bottom. I would not be afraid to come in with that draught of water. I should think that if she did strike she would strike but once, and I would rather take that risk than to stay outside. I would rather come in with a vessel drawing that draught of water than I would come in with a vessel light; that is, with a propeller, especially with the wind in the northeast blowing heavily. I would hardly attempt to come in with a light propellor with the wind blowing in the northeast in that way.

Q. If a man had navigated his vessel within 80 or 100 feet of this small light he would have been too far north, would he not?

A. Yes, sir; I think he would.

Q. Then the stern of the vessel touching this spit, and the wind blowing from this quarter as described, would tend the bow of the vessel over this way and throw her on the bar, would it not?

A. Yes, sir; if she struck heavily enough it would throw the bow over.

89 If a vessel don't strike hard enough to stop it altogether it don't make much difference, but if they strike hard enough to stop her, then she may swing over.

Q. Now you have testified here what things you would do under the circumstances; being familiar with the harbor, you say you would not hesitate to come in if you had a good staunch vessel?

A. No, sir; I would not.

Q. You would not hesitate to stay out neither?

A. No, sir; if I had fuel enough I would not hesitate to stay out, if I thought it was necessary.

Q. In an ordinary gale of wind, and with a good staunch propellor, could you not lay off the harbor of Chicago without any difficulty all night?

A. Oh, yes, sir; and there would be no danger if you kept her in the right position.

Q. Well, captain, you consider it safer, of course, to come in when it is calm than when there is a storm of that kind blowing?

A. Oh, yes, sir.

Q. And it is safer in day-light than it is in the dark, is it not?

A. Certainly it is.

90 Captain Warren, a witness called on behalf of defendant, being first duly sworn, was examined in chief by Mr. Stiles, and testified as follows:

Q. What is your occupation, captain?

A. I am a grocer now.

Q. What has been your occupation heretofore?

A. Sailor.

Q. In what capacity?

A. Master, and in all capacities.

Q. How many years have you been a sailor?

A. Twenty-nine years.

Q. Were you familiar with the entrance to the harbor of Chicago from 1865 to 1868?

A. Yes, sir.

Q. State, if you can, what changes, if any, took place in the harbor of Chicago from 1865 to 1868.

A. The channel worked south.

Q. State whether the changes were such as to make any change necessary in the mode of coming into the harbor.

A. About the same.

Q. Captain, from your experience and knowledge of sailing, and your experience as a mariner, state whether, if the wind was blowing from the northeast, or from that quarter, a strong breeze, and you were
91 approaching on a propeller drawing eleven, eight, or nine, a loaded propeller, and reached the harbor of Chicago about eight o'clock in the evening on the night of the last of August, state whether or not you would consider it your duty to attempt to enter.

A. I should come in.

Q. Why?

A. I would think it safer.

Q. In what respect safer?

A. A propeller is not a very good thing to lay outside in a blow.

Q. Explain to the jury why.

A. It blows around from one side to the other.

Q. Is a propeller different in that respect from a sail vessel?

A. Yes, sir.

Q. What is the difference?

A. I don't know what the difference is, unless spars tend to steady the sail vessel.

Q. Doesn't a propeller stand higher out of water?

A. It may be in that.

Cross-examination by Mr. Borden.

Q. Were you sailing on a sail vessel in 1865 or 1867?

A. No, sir; on a propeller.

Q. During 1867?
A. In 1867 I wasn't sailing at all.
Q. In 1866 you were?
92 A. Yes, sir.
Q. You don't know then how it was as to there being any change in '66 or '67, do you?
A. I was down at the pier very often.
Q. You took no soundings?
A. No, sir; I took no soundings.
Q. Your information then upon that subject is not very definite as to what changes might have taken place between '66 & '67.
A. There wasn't much difference.
Q. Do you think you could tell how far that spit had extended south?
A. I could tell by the water.
Q. How much did that spit move south in '66 & '67?
A. It worked south.
Q. How much?
A. I can't tell exactly.
Q. You sailed a propeller in '66, you say?
A. Yes, sir.
Q. In the night-time, when it was dark, and you were coming into the harbor of Chicago, how could you see the south pier?
A. We generally could tell by the lights.
Q. A person who had not had some familiarity with the lights couldn't tell in regard to this, could he?
A. I had no particular lights to come in by myself. I generally
93 could tell by the lights on Rush st. bridge.

The defendant then read in evidence the deposition of Jones, taken in this cause, at Chicago, on the 13th day of October, A. D. 1868.

94 *Deposition of R. A. Jones.*

Q. His name, age, and occupation, residence.
A. R. A. Jones; age, 46; master of propeller at present; Buffalo, N. Y.
Q. How long have you been master of the vessel?
A. I have been master of vessel 14 years.
Q. How many years have you been a sailor?
A. About 20.
Q. On what waters have you been sailing since you have been master of a vessel?
A. On Lake Huron, Lake Mich., and a part of the time on Lake Erie.
Q. State whether you are familiar with the harbor of Chicago.
A. I am.
Q. For how long have you been acquainted?
A. Nineteen years.
Q. Of what kind of craft are you master?
A. Propeller.
Q. How long have you been master of a propeller?
A. About 30 years.
Q. While you have been master of a propeller, have you ever had occasion to lay outside the harbor of Chicago on account of the weather? If yea, state under what circumstances.
A. I lay outside once. Last spring coming in a heavy northeast gale, snowing very heavy, I came to an anchor this side of Gross Point.
Q. What time in the day or night was this?

A. Between 5 and 6 in the morning.

95 Q. State whether, at any other time, you lay outside on account of the weather?

A. No; except in a fog, when I couldn't see anything.

Q. Do you know the propeller Buffalo; if yea, how long have you known her?

A. I do. I have known her since '52 or '53. I think that is the year she came out in.

Q. Do you know Captain Drake, of the propeller Buffalo; if yea, how long have you known him?

A. I have known him since '54.

Q. Do you know his reputation and standing as a seaman?

(Object to as incompetant.)

A. I do.

Q. What is it?

(Objected to as incompetant.)

A. Very good, first class; he has always been considered as an experienced, competant man.

Q. What kind of a sea-going vessel is the propeller Buffalo?

A. Very good.

Q. If you were approaching the harbor of Chicago, as master of the propeller Buffalo, during the last of the month of August, and were to approach the harbor at about 8 in the evening, the night dark, the wind blowing heavy from N. E. by N., and the propeller drawing about 12 feet of water, what would you consider it your duty to do, as master, as to attempting to make the harbor or to lay out?

(Objected as incompetant and irrelevant.)

96 A. I should think it my duty to come in, provided I could see the lights & piers.

Q. State, if you know, what effect the wind, blowing from the quarter first supposed, would have on the water in the channel, as to its depth.

A. It would have a tendency to raise the water considerable. I have known the water to raise from one to three feet with the wind from that direction.

Q. State what effect the wind blowing from that quarter would have on the depth of water in the channel as compared with that produce by the wind blowing from the east.

A. It would raise it more than it would from the eastward.

Q. State whether, from your experience as a seaman, you would consider it safe for a loaded propeller to attempt to enter the harbor when a tug would not dare to venture out on account of the weather.

A. I have come in when tugs didn't think it safe to go out.

Cross-examination by Mr. Bordan, att'y for the plaintiff.

Q. The trips of propellers are arranged so that they may reach the harbor of Chicago in the day-light, are they not?

A. No, sir.

97 Q. You say they are arranged without regard to the time of their arrival in Chicago?

A. I don't say that; that is not my answer, sir. They are not arranged to arrive here daily different from night. They are arranged to arrive here as soon as they can get here. That is the sum and substance of it.

Q. Haven't you generally entered the harbor of Chicago in your trips before it was dark, or in day-light?

A. No, sir. I have come in as often in the night as in the day time.

Q. In whose employ are you?

A. I am in connection with the Grand Trunk R. R. of Canada. Capt. Montgomery & myself own the propeller.

Q. Did you ever sail on the Buffalo?

A. No.

Q. Your knowledge of her is from reputation, is it?

A. I have sailed propellers in the same line, and was well acquainted with her in former years.

Q. Did you ever sail with Captain Drake?

A. I did one trip as a passenger. He, to, held the capacity as first mate on a propeller, Plymouth, in '54, I think. I am almost positive it was '54.

Q. Your knowledge then of his abilities as a seaman in '67 was based on his reputation and on hearsay, was it not?

A. I have been in company with him outside when he was master of a propeller, and when I was master, in some bad weather, when
98 I thought his judgment was very good. I judged from his actions at the time, and that is the way I formed my opinions. I have been connected with him in different places and at different times on propellers.

(Answer object to as not responsive to the question.)

Q. You are familiar with the harbor of Chicago, are you not?

A. I am.

Q. About how far east of the end of the north pier is the proper place for a propeller to make a turn to come into the harbor, last season?

A. The length of a propeller off.

Q. Did propellers in '67 usually run as near as that to the end of the north pier before making the turn?

A. Yes, with the wind from the north and eastward.

Q. What was the object of running so close to the north pier?

A. To keep in the best water and to allow a little for drift.

Q. If a propeller, last season, should have kept off the end of the north pier a quarter or half mile with the wind in the direction spoken of at the time of making the turn to come in, she would be liable to be troubled in making the entrance on account of her leeway, could she not?

A. I can't answer the question because I don't know what direction you have got the propeller in.

99 Q. Well, your coming to the harbor of Chicago, [of Chicago,] we will say, from down the lake with a strong wind from the quarter spoken of, N. & eastward, and instead of making the end of the north pier as close as you have spoken of before making a turn to come in you are off the end of the pier a greater distance, say a quarter of a mile, in an easterly direction, leeway of the vessel would trouble you about entering, would it not?

A. No.

Q. Why?

A. Because you are right off the end of the pier and are steering a little south of west to approach the harbor by the vessel being due east of the pier.

Q. If you were to keep off the end of the pier, say a quarter of a mile, coming on your course, in '67, where would you make your turn to come in, having the wind as spoken of?

A. We would make it there, steer right in; we hardly ever make a right angle; we generally come around gradual, [we generally come

around gradually,] according to winds and the sea, so as to keep the vessel in as easy a position as possible and under our control.

Q. In '67, how far did the north pier extend out beyond the large light-house?

100 A. Well, I never measured, but I should think probably 500 feet or more. There was a red light on the end of the pier, on the end of the extension the new pier.

Q. There was a small light-house at the end of the north pier, as it was in '67, that showed a red light?

A. There was.

Q. The large light-house which was, as you think, about 500 feet further in showed what kind of a light?

A. A bright or white light.

Q. Well, in coming to Chicago in '67, with the wind strong north & east, and after dark, how would you govern the propeller so as to properly enter the harbor.

A. I would run south till I opened the bright light south of the red light and haul up for the bright light not quite the length of the propeller from the pier. I have come in here with all kinds of weather, night and day.

Q. So you, in coming in in such case, govern yourself by the lights on the north pier and by them tell where to put your vessel?

A. We are governed by the lights until we can see the piers, then we are governed by them; we are governed by the piers.

Q. Well, we are supposing a when it is cloudy and dark?

A. We are governed by the lights till we see the piers, and then we are governed by the piers.

101 Q. Of a dark and cloudy night, in '67, wouldn't you have placed your vessel on her course to come in, and actually be entering the harbor or the channel to it, before you would be able to see the south pier?

A. Yes.

Q. How far, in '67, was the end of the south pier from the outer end of the north pier?

A. I can't answer that question correctly, for I never measured it; I should think about 2,000 feet or more.

Q. Then how far from the end of the south pier to the first elevator?

A. Last year it was probably a thousand feet or more.

Q. In the case supposed you would have made the turn to come in and be entering the channel before you could see the elevator, would you not?

A. Well, I don't know; we could generally see the elevator when we got into the channel.

Q. That would be at or after you had passed the end of the north pier, would it not?

A. We generally see the elevator before we pass the end of the pier.

Q. The elevator showed no lights, did it?

A. No. It being the largest object, we can always see it except in fog or snow.

Q. What direction did the north pier extend in '67 from the large light-house outward?

A. About east.

Q. Straight with the river east of Rush Street bridge?

A. No; it runs more to the eastward.

102 Q. What was the direction of the river from Rush Street bridge down to the end of the south pier as it was in '67?

A. About east-southeast.

Q. How many degrees south of east is that?

A. Two points.

Q. How many points are there, counting from east to south?

A. 8 points.

Q. Then the direction of the north pier from the large light-house to the outer end of it was about east?

A. I think about east; the extension part that was there last year.

Q. How wide was the channel last year from the end of the north pier due south?

A. I don't understand that question.

Q. There was a shoal south of the north pier, to the north of which the channel lay; is not that so?

A. It is so.

Q. Now, how far eastward did that shoal extend, with reference to the end of the north pier in '67?

A. It did not extend quite so far out as the end of the north pier.

Q. So that the channel began about [about] abreast of the end of the north pier?

A. Yes. No; I am mistaken. The shoal did extend out a good deal further; they run the piers out this year, and that is what confused me.

Q. In August, '67, how wide was the channel abreast of the end of the north pier?

103 A. It was wide enough for two vessels to pas. I should think, probably, from 100 to 150 feet. It might have been more, but I never measured it.

Q. It extended at that point from the end of the north pier the distance you speak of?

A. No, sir. There was shoal water close to the north pier.

Q. To the end of it?

A. Yes.

Q. How far south did that shoal water extend at that point?

A. It deepened off from the pier gradually about 200 feet, so that a vessel drawing a lighter draught of water could go nearer the pier than a vessel drawing a larger draught.

Q. How far from the end of north pier was it to 12 feet water?

A. I have gone out with propeller in '67 and drawn from 12 to 12½ feet of water within 200 feet of the pier.

Q. Where was the channel the narrowest?

A. Off the end of the pier; it might have been a little outside, or thereabouts.

Q. At that point, half-way between the end of the pier and the large light-house, how far south of the pier was it to 12 feet water?

A. I should think about the same distance; it might have been a little closer to the pier.

Q. So that the channel in '67 ran about parallel to the extension of the north pier from the large light-house out to the end?

104 A. Not quite; boats could go closer to the large light-house than to the end of the pier.

Q. In '67 hadn't this shoal next to the north pier made more to the southward than it was in '66?

A. I think it had.

Q. Where bouts had it made the most?

A. At the outer end.

Q. Now, if a propeller, in August, '67, coming to Chicago with a strong wind from the north and eastward should keep on the southward far

enough to get the range or be in range with the south pier, wouldn't she be too far to the southward to enter the harbor properly and safely with the wind blowing as spoken of?

A. It think she would be safe enough provided she didn't make much leeward. I think the water was almost as good there as anywhere. I think it was as good there as any part of the channel.

Q. But she would be close to shoal on the south side of the channel, would she not?

A. She would be closer to it than she would if she was further north.

Q. Well, to properly enter the harbor at that time, and, with a wind as spoken of, oughten she to make the turn to come in before she had gone south far enough to be in range with the south pier?

A. It depends upon how much turn she had to make to get on that range; she may not have had to have turned a quarter of a point.

105 Q. If she were east of the end of the north pier and south far enough to be in range with the south pier, wouldn't she be further to the south of the end of the north pier than she ought to be with the wind, as aforesaid, in order to come in properly and safely?

A. I have never been south of that range, and I don't know how much water there is there.

Q. The course you took, and the one which you think was the proper one, was to make the entrance or mouth of the harbor by means of the lights on the pier; is not that so?

A. I opened the bright light south of the red light; then I run in to get hold of the piers and to open the lights of the harbor; give the north pier about 200 feet; steer right in by keeping a little closer to the north pier as you go in.

Q. If a propeller at the entrance or approaching the entrance was to get too far to the southward with the wind as spoken of, she would have to turn her bow to the northward, would she not, in order to avoid as much as possible the leeway she would make in coming in?

A. She would.

Q. Then she would be liable, especially if she struck the bottom, not to mind her helm accurately, and if she touched the shoal on the north with her stern wouldn't she be liable, then, to shear off to the

106 southward and so go on the bar south of the channel?

A. She would.

Q. You say you anchored once this side of Gross Point. Why didn't you put your propeller's head to the wind, and lay off and on, as the saying is?

A. There was a big sea rolling; snowing; got into smooth water and let go my anchor to guard against collision and the laboring with the vessel.

Q. From Gross Point southward and abreast of Chicago the water is comparitively with the open lake shoal, and there is good roadstead where the waves are not so strong and heavy as they are in deep water; is not this so?

A. There is no roadstead; there is no protection from the wind; but the water being shoal, the sea is not so heavy as in deep water.

Q. So that in ordinary blows from the north and eastward a good sea-worthy propeller, if her master saw fit to put her head to the wind and lay off and on the harbor of Chicago could do so safely; could he not?

A. In a heavy blow I think it would be a good deal of risk, and vessel labors very heavy, and I think she would be better in port. I have known vessels to drag ashore off Chicago, and I have known of propel-

lers kept outside off and on had to run back into Chicago in a leaky condition.

107 Q. Now in a heavy blow don't the vessels lay outside of Chicago instead of coming in?

A. They do; a great many. They find they can't get tug sto tow them in. I refer to sail vessels.

Q. So you say that in a very heavy blow a propeller ought to come in and take the risk of shipwreck at the entrance instead of laying off and on outside at the risk of becoming leaky?

A. The captain of the vessel must be his own judge in that matter—judge from the appearance of the weather and sea, and so forth. I have always come in to Chicago when I got here, and I thought it a great deal better to be in harbor than outside taking chances.

Q. But you have known or heard of at least one case of a propeller being wrecked in taking the chances of getting into the harbor instead of staying outside, haven't you?

A. Yes.

Q. The entrance to the Chicago harbor is dangerous in the case of a heavy blow, if a propeller gets in the wrong place, ceases to mind her helm, or meets with any accident at the time of entering, is it not?

A. Yes, if she cease to mind her helm or meets with an accident it is dangerous.

Q. She hasn't any chance to recover herself.

A. The chances are not much; she might back out into the lake.

108 Q. She would be almost sure to go on the bar south of the channel, if the wind were from the northeast, with an additional chance, if she did not stick on the bar, to be thrown on the Illinois Central breakwater, wouldn't she?

A. She would, providing her engine wouldn't back her out into the lake.

Q. You have spoken of a heavy blow from the northeast; now, I will ask you again, whether in cases where the blow was an ordinary one from that quarter, but sufficiently rough that the ordinary river tugs would not venture out into the lake, could not a good seaworthy propeller, properly manned, have her head put to the wind by her master, and made to lay off and on the harbor of Chicago, for the period of a night, with safety?

A. Very likely she could; with an ordinary blow she could, of course, with safety.

Q. Wouldn't it be the proper course for a master to persue who arrived at Chicago under such circumstances after dark, and who was making his first trip that season, and who had to inquire of another master as to the proper manner of entering the harbor, instead of venturing to make the effort to come in upon the say-so of another, and in the dark, at that?

A. If it was only an ordinary blow, he might of thought there would have been no trouble in coming in.

109 Q. But, if he wrecked his vessel in the attempt, that would show that he thought wrong, wouldn't it?

A. I might say, in case he stopped outside and lost his vessel, he would have been very foolish for not coming in, when he was at the entrance of Chicago harbor.

Q. Well, if it was dark and the wind blowing as stated, and his propeller a good sea vessel, and he unfamiliar with the entrance that season, so as to have to enquire of another what the proper way was to come in, wasn't it his duty, as a seaman, to put his propeller with her

head to the wind, and lay off and on the harbor of Chicago till daylight?

A. I think, if he apprehended any trouble, it was his duty to do so.

Q. Didn't he have a bar to the north of him, and a bar to the south of him, with the Illinois Central breakwater in the distance, standing almost broadside towards him, in case he attempted to make the entrance?

A. Well, the papers reported 14 feet of water; the wind northeast would raise the water from one to two feet, and the lights and piers visible, I wouldn't hesitate, to be in his place, to approach the harbor.

Q. Is that a direct answer to the question, captain?

A. It is; with the exception, I may differ in the depth of water; I think, if I remember right, the papers reported from 14 to 16
110 feet of water on the bar in '67.

Q. Did I ask you about the depth of water?

A. Yes, if I remember right; I told you I have gone out here and drawn 12½, but I don't remember ever sounding the depth of the water on the bar.

(Object to as not responsive to the question.)

Q. I put to you the following question, which I put again with an additional word, "Didn't he have a bar or shoal to the north of him, and a bar or shoal to the south of him, with the Illinois Central breakwater in the distance, standing almost broadside towards him, in case he attempted to make the entrance?"

A. He did.

Q. You yourself was familiar with the entrance at that time?

A. I was.

Q. If you hadn't been, would you have risked the entrance in the dark?

A. I would; by having been there the year previous, and knowing the depth of water, and making inquiry from competent persons, and knowing the water would be high by the wind being northeast, I think I wouldn't hesitate in approaching the harbor under those circumstances.

Q. Suppose it had been blowing from the northeast 4 hours,
111 how much would that raise the water?

A. I have known it to raise the water considerably, before the wind got up to the upper end of the lake.

(Object to as not responsive to the question.)

Q. Now, please to answer it.

A. I don't know.

Q. Suppose it had been blowing 4 hours so that at the end of the 4 hours the entrance of the harbor was too rough for ordinary tugs to venture out, but was not what is called a heavy blow, how much would it raise the water in that period?

A. It might raise it from 6 to 18 inches.

Q. If a propeller coming in, drawing only 11 feet 8 or 9 inches, pounded or struck on the bottom one or more times, the water couldn't have been raised much, could it?

A. No; if the vessel was in the channel.

Q. The probability would be, if a propeller of that draught pounded on the bottom in coming in, that she was not in the proper channel; would it not be so?

A. She might have been, and still fell in the trough of the sea, and touched the bottom.

Q. But the greater probability would be, that she was out of the proper channel, wouldn't it?
A. She might, and she might not.

112 Re-direct examination by Mr. Styles.

Q. Who, after all, is and was the best judge as to whether the propeller should come in to the harbor, or stay out on the night in question?
(Objected to as incompetant.)
A. I think the master is to be the judge at all times; I know I am.
Q. Is there not more or less danger to a propeller or her cargo anywhere outside of the harbor during a storm?
A. There is.

ROBERT A. JONES.

113 And the defendant then read in evidence the deposition of Gibson, taken in this cause on the 13th day of October, A. D. 1868, at Chicago.

114 *Deposition of James Gibson.*

James Gibson, a witness of lawful age, being called & duly sworn on the part of the defendant, in answer to the several interrogatories saith as follows:

Int. 1. What is your age, residence, & occupation?
A. My age is 34; residence, Buffal, N. Y.; occupation, sailor.
2. How long have you been a sailor?
A. About 22 years.
3. In what capacity have you been engaged as sailor?
A. In all capacities; as cook, ordinary seaman, seaman, second mate, 1st mate, master.
4. In what capacity are you acting at present?
A. As master of the Mohawk, propeller.
5. How long have you been master of a vessel?
A. At different times, 7 years.
6. How long were you mate?
A. I shou'd think about 6 years.
7. Upon what waters have you sailed as master?
2 years on salt water & 5 years on fresh water—Erie & Michigan Lakes.
8. How long have you been master of the Mohawk?
A. This will make the 4th season.
9. Do you recollect the night of the 31st of August, 1867?
A. Yes.
10. Where were you & what were you doing on that night?
A. I came into Chicago on the propeller Mohawk.
11. What was the state of the weather as you approached the harbor?
115 A. Blowing strong, by about northeast by north.
12. How often had you been into this harbor before that season?
A. Seven times, probably 8 times.
13. How did you find the harbor as compared with what it was the season before, & what changes, if any, had occurred?
A. We steered in on the same range, only a little more to the southward. There were no changes.
14. How much more to the southward did you steer?

A. Probably a point in a ¼ of a mile.

15. Why did you steer more to the southward in that season than in the season previous?

A. Because I thought the water was better.

16. State how the wind was blowing, whether a gale or otherwise, on the night of the 31st of August, 1867.?

A. It was blowing strong by about northeast by north.

17. What time did you enter the harbor that night?

A. About 11 o'clock.

18. How many feet of water did your vessel draw?

A. 11 feet 8 or 10.

19. State whether you had any difficulty on that occasion in entering the harbor with your vessel?

A. Not any.

20. Does the Mohawk ever draw any more water than that?

A. Yes.

21. How much?

A. I've seen it draw 13½ feet.

116 22. How much is the most she had drawn coming into this harbor that season?

A. I disremember of her drawing over 11 feet 8 or 10.

23. Did you at that time know the propeller Buffalo, &, if so, how long had you known her?

A. I did know her; I had known her 15 years.

24. What sort of a vessel was she for strength & staunchness at that time?

A. She was considered a 2d-class vessel, I suppose.

25. Did you see her on your way into the harbor that night?

A. I saw a propeller there, but didn't know what it was. I afterwards learned it to be the Buffalo.

26. State, if you know, what the condition of the weather was at about 8 o'clock that evening, as compared with what it was at the time you entered the harbor.

27. At about 8 o'clock I should think that fore & afters would carry their lower canvass on a wind. At about 11 o'clock they'd carry single-reefed canvass on a wind.

28. That would make the wind heavier at 11 o'clock than at 8 o'clock, would it not?

A. Yes.

29. State whether on that trip you saw the master of the propeller Buffalo; if yea, state what conversation, if any, occurred between you.

A. I seen the master of the propeller Buffalo at Newport or Marine City, (now so-called;) he asked me how to go into Chicago & I told him.

117 30. What did you tell him?

A. Range the south pier & steer in.

31. Did he ask you whether the channel had changed; &, if yea, what reply did you make?

A. He did. I told him the change was very little.

32. You may state whether or not you told him to steer in on the same ranges as those of the previous season?

A. I don't know as I did.

33. State as fully as you can what you did say to him in reference to the channel.

I told him to range the south pier & steer in. He said, "I see there is but very little difference between the ranges this year & last."

34. Did you make any reply to that; if so, what was it?
A. I disremember of making any reply.
35. State what you mean by ranging the south pier.
A. Get the wall of the south pier as near as you can in a straight line & steer for the center of the river.
36. State whether in coming into the harbor that night with your vessel, the Mohawk, you steered by the same ranges & directions that you say you gave to the master of the Buffalo.
A. I did, as near as I could.
37. State whether you had any difficulty in steering according to those ranges & directions; &, if yea, what was the cause of that difficulty?
A. It was dark, & I steered as near as I could to it.
118 38. Do you know how the Buffalo was loaded on that trip?
A. I do not.
39. State whether the wind blowing as it was on that night made any difference in the depth of the water in the channel from what it would ordinarily be.
A. It would raise the water.
40. State whether, with the vessel you had charge of, you would consider it as safe to make the harbor as you would if the wind had been blowing from an opposite direction.
A. There would not have been any danger at all with the wind from an opposite direction; only the water wo'd have been lower.
41. State whether you had ever sailed on the Buffalo. If yea, at what time?
A. I was mate of her in the fall of 1860.
42. State whether, in your opinion as a mariner & from your experience as such, taking into consideration the state of the weather & the lay of the channel, as it was when you entered the harbor, if you'd been in command of the propeller Buffalo you would have considered it your duty to enter the harbor or to have stayed outside on that occasion.
(Objected to as incompetent.)
I should have considered it my duty to have come in if she'd
119 not have been drawing over 12 feet of water.
43. State why you would have considered it your duty to come in.
A. Because I thought it would be as safe to come in as to lay outside.
44. Give the reassons why you came in that night instead of staying outside.
A. Because Chicago was the port of destination.
45. Is that all the reason?
A. That is the only reason I have for coming into Chicago.
46. Do you know who was master of the Buffalo at that time?
A. James Drake.
47. Do you know him; if yea, how long have you known him.
A. Yes, I've known him 15 years.
48. Do you know what sort of a mariner or sailor he is? If yea, state.
A. I've never sailed with him, but I have always considered him a good sailor man.
49. Do you know his standing & reputation as a sailor; if yea, what is it?
(Objected to as incompetent.)
I can't say any more than that I've always heard him represented as a good sailor man. I've never heard anything against him.
50. Since you 've been master of a propeller, have you ever laid out-

side the harbor of Chicago on ac. of the danger of attempting to enter it.

120 A. Never since the new channel has been cut.

Direct closed.

Cross-examination.

X 1. In whose employ are you?

A. In the Western Transportation Company's.

X 2. What line did the propeller Mokawk belong to?

To the Western Transportation Company.

X 3. Did your propeller pound any in coming in?

A. She struck once or twice, I believe.

X 4. She was in the channel at the time, was she?

A. She was, as near as I can judge.

X 5. What do you mean by saying as near as you can judge?

A. I mean that she was in the channel as near as I knew; the night was dark.

X 6. You saw a propeller on the bar, did you?

A. Yes.

X 7. How far was she from you?

A. I couldn't say exactly.

X 8. About how far as you passed her?

A. I couldn't tell within 50 feet in the night.

X 9. About how far?

A. I might say 800 feet.

X 10. That was to the south of you?

A. Yes.

X 11. Couldn't you make out what propeller she was?

A. I didn't know for certain.

121 X 12. Why couldn't you tell what propeller she was?

A. Because I paid no heed to what she was.

X 13. Could you see her distinctly?

A. I could see to know that she was a propeller.

X 14. But you couldn't see her sufficiently distinct to make out what propeller she was, could you?

A. I didn't pay attention enough to find out.

X 15. Wasn't the night so dark that you couldn't make out if you had paid attention?

A. If I'd had nothing else to do I presume I could have found out what the propeller was.

X 16. By her lights, or in what way?

A. By the general appearance of the vessel.

X 17. Was it cloudy that night?

A. Yes.

X 18. Raining any?

A. I don't remember that it rained until we got inside. I believe it rained after we got inside.

X 19. Any mist or fog.

A. Neither.

X 20. Just before you made the turn to come in what course were you running.

A. Somewhere about south.

X 21. How far were you east of the end of the north pier?

A. Probably ½ mile.

X 22. Could you see & take the range of the south pier from that place?

122 A. I could see to range the river & the lights in the river; I couldn't see the range of the south wall of the pier. In coming into Chicago in the night we can open the river, & get the range of the south side of the river, which answers the same purpose as the range of the south pier.

X 24. What do you mean by the lights of the river?

A. Steamboats & vessels' lights lying each side of the river.

X 25. From them you form a rough guess where the south pier is?

A. From them & the general appearance of the river, from elevators & buildings, we can find the range of the river.

X 26. Could you see the elevators that night when you where a ½ mile east of the end of the north pier?

A. Yes.

X 27. You came through the north channel or the channel just south of the north pier?

A. Yes; we came through the only channel there was to come through.

X 28. There was a bar on the south of the north pier, was there not?

A. Yes.

X 29. In what direction did it lay?

A. It laid to the southward of the north pier.

X 30. How did it lay with reference to the end of the north pier?

123 A. My judgment would be that the shoal at the end of the light-house would be 50 feet from the light-house, & the lay of the shoal would be about east & west; I mean the large light-house.

X 31. It began about 50 feet south of the large light-house & extended south, did it?

A. The shoal from the light-house would be south; then the range of the shoal would be east & west.

X 32. This shoal or bar that you've been speaking of is one lying south of the north pier, & north of the channel that you came through, was it?

A. Yes.

X 33. You say that began about 50 feet south of the large light-house?

A. Yes.

X 34. And then how far south did it extend?

A. It extended south about 50 feet; the shoal extends about 50 feet south of the large light-house?

X 35. Then when you came through that night how deep was the water 50 feet south of the large light-house?

A. I know there was 11 feet 8 or 10, as the propeller Mohawk was drawing that when she came in.

X 36. How far east from the large light-house did that bar or shoal extend?

A. I could not tell exactly.

X 37. How far did the north pier extend beyond the large light-house?

A. I don't know.

124 X 38. About how far?

A. Somewhere about 250, 300 feet.

X 39. How far was it from where you turned to come into the elevators?

A little over ½ mile.

X 40. You were about ½ mile east of the end of the north pier when you turned to come in?

A. Somewhere in that locality.

X 41. This bar or spit that we have been talking about extended the farthest south of any place at a point south of the large light-house?

A. There is a shoal to the southward of this north spit that the Buffalo was on. I can't understand what you want to get at.

X 42. How near to the north pier did the channel you came through approach?

A. Some parts of that channel may be 50 feet from some part of the north pier, & some parts of the same channel may be 100 feet from the north pier.

X 42. Whereabouts does that shoal on the north side of the channel reach the farthest south?

A. As near as my judgment will permit, between the outer end of the new pier & the inner end of the new pier.

X 43. Would that be east or west of the large light-house?

A. East.

X 44. How far east?

A. I should judge between 100 & 150 feet.

125 X 45. Is that bar making or losing?

A. I've always understood it to be making.

X 46. In what direction?

A. Making to the southward.

X 47. Where did the Buffalo lay with reference to the large light-house?

A. She laid S. S. west of the large light-house.

X 48. How wide was the channel in its narrowest place?

A. I heard some say it was 80 f't.

X 49. Whereabouts was it the narrowest with reference to the large light-house?

A. Then I considered it a little ways east of the large light-house.

X 50. What distance was it as wide as 80 feet?

A. I couldn't tell exactly, as I never sounded it.

X 51. About what distance?

A. Probably 60 or 80 feet.

X 52. Then east of that it gradually widened out, did it?

A. I've always supposed it did.

X 53. The propeller Buffalo was on the bar lying south of the channel, was she?

A. Yes.

X 54. Do you know how much water there was on that bar?

A. I don't know; I refer to the shoal that the Buffalo was on; I went out next day to her, but the sea was so heavy we couldn't get to her with a tug.

126 X 55. Was the channel straight?

A. I considered it such.

X 56. And its direction laid east & west?

A. Somewhere in that direction.

X 57. In coming in, in the dark that night, you had to come in by guess a little, didn't you?

A. We always come in by guess a little.

X 58. A little more by guess when it's dark; is that so?

A. Yes.

X 59. The channel had shifted some since the year before, had it not?

A. I presume it had; but the same range would have brought you in.

X 60. Didn't you say you had to steer a little more to the southward?

A. I did for to keep the center of the channel.

X 61. You didn't know the lay of the channel accurately, did you?

A. No; I never have.

X 62. When did it commence blowing?

A. If I remember rightly, about 3 or 4 o'clock p. m., it commenced blowing from northeast by north.

X 63. Were there any vessels lying outside when you came in?

A. I disremember that there was.

X 64. You say you were mate of the Buffalo in 1860. Were any changes made in her afterwards?

A. She was rebuilt some 2 or 3 years after that.

127 X 65. Then you don't know of your own knowledge, in August, 1867, what sort of a vessel she was?

A. I knew her to be a second-class vessel, & as good a sea vessel as there is upon the lakes.

X 66. Was Capt. Drake a drinking man?

A. I've never seen him the worse for drink.

X 67. Do you say that if you'd been in command of her & she'd drawn over 12 feet of water you'd have staid outside?

A. If she'd not have drawn over, or 3 or 4 inches over 12 feet, I would not have staid outside.

X 68. Your own vessel drew how much?

A. Eleven feet 8 or 10.

X 69. And you struck the bottom 2 or 3 times in coming in?

A. I believe we struck the bottom 1 or 2 times in coming in, & we always do; we seldom come in without striking when there is any sea on.

X 70. When the wind is blowing from the direction that it was blowing that night is not the entrance more difficult & dangerous than if blowing from any other quarter?

A. I consider it better; for this reason, the water is higher.

X 71. Is it higher than if it should blow from due east?

A. Yes.

X 72. When you made the turn to come in, didn't the wind strike your propeller broadside?

A. Somewhere about 4 points abaft the beam.

128 X 73. What was your direction in coming in after you made the turn?

A. As near as I can judge it would be about west.

X 74. And the wind was northeasterly?

A. Yes.

X 75. Wouldn't it be difficult, with such a wind, & running on such a course, to manage a propeller & put her just where you wanted to?

A. Sometimes it is.

X 76. When a propeller, coming in the channel with such a wind, strikes the bottom, isn't she liable to sheer off?

A. Yes.

X 77. And if she got a little too far to the north, so that her stern should strike the bottom, she would be very liable to sheer off to the southward, would she not?

A. I should think she would.

X 78. The effect of that would be to throw her on to the shoal south of the channel?

A. I presume so.

X 79. Propellers do lay outside, do they not, sometimes?
A. In some cases they do.
X 80. They lay out, do they not, in cases of a heavy blow?
A. Yes; when they are deep loaded & bound down.
X 81. How do you mean bound down?
A. Bound for Buffalo when they have a heavy load in & are short of fuel.

129 X 82. Don't they lay outside of the harbor of Chicago when they are bound in, in case of a heavy storm at night?
A. I've never done it.
X 83. Haven't you known others to do it?
A. I've seen propellers lay outside, but didn't know their business.
X 84. The entrance of the harbor was very rough that night, was it not?
A. I've come into it when it was rougher.
X 85. Still, it was very rough?
A. Yes; the wind was blowing a strong breeze.
X 86. The waves ran pretty high at the entrance of the harbor, didn't they?
A. Yes; there was considerable sea at the entrance.
X 87. More than there was outside?
A. No; there wasn't so much. We never consider it difficult to come in now since we've got the north pier built out.
X 88. Is it good ground outside of the harbor to stay on in case of a storm?
A. I don't know. I've never had an anchor down outside.
X 89. Isn't the water comparatively shoal outside of the harbor for some distance out, so as to render the sea less rough than it is out in the open lake?
A. It is that fact that reduces the sea in coming into the harbor.

130 X 90. In such a storm as was blowing that night a propeller could have put her head to the wind & laid off the harbor with safety, couldn't she?
A. I presume she could.
X 91. You would not have considered it difficult or dangerous to do it, would you?
A. I should have considered it very foolish to do it if I'd been bound in.
X 92. Well, if you had the mind to do it, you would not have considered it difficult or dangerous to do it?
A. I presume we could have done it well enough.
X 93. Do you know why Capt. Drake inquired of you about the channel?
A. The reason was, I suppose, that he'd not been there that year.
X 94. It was his first trip to Chicago that year, was'nt it?
A. I believe it was.

JAMES GIBSON.

Sworn before me this 13th day of October, 1868.

O. R. W. LULL,
Notary Public.

Which was all the evidence offered by either of said parties.

131 The defendant then moved the court upon the evidence aforesaid to instruct the jury—
"That if the jury believe from the evidence that the loss of the coffee

in controversy was within one of the exceptions contained in the bill of lading offered in evidence—that is to say, if it was occasioned by 'perils of navigation of the lakes or rivers'—then the burden of showing that this loss might have been avoided by the exercise of proper care & skill is upon the plaintiff; then it is for him to show that the loss was the result of negligence."

Which instruction the court refused to give to the jury, and to which the defendant then & there excepted.

And the court thereupon, at the request of the plaintiff, instructed the jury as follows, viz:

"The bill of lading in this case excepts the defendant from liability, when the property is not insured, from perils of navigation. It is incumbent on defendant to bring itself within the exception, and it is the duty of the defendants to show that they have not been guilty of negligence."

To the giving of which instruction the defendant then and there excepted.

And the court thereupon also instructed the jury as follows, viz:

132 "If the propeller was about to enter the harbor after dusk in the evening, the wind blowing fresh from the ~~southeast~~, but not a heavy gale, and the vessel touched and would not steer, the master should have made an effort to do one of three things, to back, or to put out to sea, or take a new course. It is for the jury to say whether he did his duty. I don't think he did, but the facts are submitted to you."

To the giving of which instruction the defendant then and there excepted.

And thereupon the jury gave their verdict against the defendant.

Whereupon counsel for defendant filed the following motion for a new trial:

133 But the court after argument overruled the said motion & gave judgment upon the said verdict of the said jury against the defendant, to which the defendant then and there excepted.

And inasmuch as the matters aforesaid do not appear of record, the defendant's counsel presents this bill of exceptions and prays that the same may be signed and sealed by the court and made part of the record in said cause, which is done at said March term.

A. G. MILLER. [SEAL.]

MARCH 20TH, 1869.

(Endorsed:) Filed March 20th, 1869.

W'M H. BRADLEY, *Clk.*

134 On this day, to wit, the 29th day of March, A. D. 1869, said defendant, by its attorneys, filed in said clerk's office its appeal bond in said entitled cause; which said appeal bond is in the words and figures following, to wit:

Appeal bond.

Know all men by these presents that we, the Western Transportation Company and George Sturges, are held and firmly bound unto Samuel K. Downer in the sum of four thousand dollars, to be paid to the said

Samuel K. Downer, his executors or administrators, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, administrators, and successors, firmly by these presents, sealed with our seals, and dated this 27th day of March, 1869.

The condition of the above obligation is such that whereas the said above-named Samuel K. Downer did, on the 20th day of March, 1869, in the circuit court of the United States, in and for the northern
135 district of Illinois, and of the March term thereof, recover a judgment against the above bounden, the Western Transportation Company, for the sum of thirty-four hundred seventy-five & $\frac{10}{100}$ dollars, besides costs of suit, from which said judgment the Western Transportation Company has prayed for and obtained an appeal to the Supreme Court of the United States:

Now, therefore, if the said The Western Transportation Company shall duly prosecute its said appeal with effect, and moreover pay the amount of the judgment, costs, interest, and damages rendered against it, and to be rendered against it in case the said judgment shall be affirmed in said Supreme Court, then the above obligation to be void; otherwise to remain in full force and virtue.

The Western Transportation Co.,
By JON'N W. TUTTLE, [SEAL.]
Attorney in fact.
GEORGE STURGES. [SEAL.]

Approved:
THOMAS DRUMMOND.

(Endorsed:) Filed March 29, 1869.
W'M H. BRADLEY, *Clerk.*

136 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said district, do hereby certify the above and foregoing to be a true, correct, and complete transcript of the record of all the proceedings had in said court in said entitled cause, wherein said Samuel A. Downer is plaintiff, and said The Western Transportation Company is defendant, as the same appears of record remaining in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court at my office, in said district at Chicago, this thirtieth day of September, in the year of our Lord one thousand eight hundred and sixty-nine, and of our independence the ninety-fourth year.
[SEAL.] W'M H. BRADLEY, *Clerk.*

[Five-cent internal revenue stamp affixed and canceled.]

137 CIRCUIT COURT OF THE UNITED STATES,
Northern District of Illinois:

The United States of America to the judges of the circuit court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court before you between Samuel A. Downer, plaintiff, and the Western Transportation Company, defendant, a manifest error hath happened to the great damage of the said The Western Transportation Company, as by its complaint appears, and it being fit that the error, if any there hath been, should be

duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December
138 next, in the said Supreme Court, to be then and there held, that, the recork and proceedings being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right, and according to the law and custom of the United States, should be done.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this twenty-second day of March, in the year of our Lord one thousand eight hundred and sixty-nine, and of our independence the ninety-third year.

[SEAL.] W'M H BRADLEY, *Clk.*

(Indorsed:) Circuit court of the United States, northern district of Illinois. Samuel A. Downer vs. the Western Transportation Company. Writ of error.

139 UNITED STATES OF AMERICA, *ss:*

To Samuel A. Downer, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein the Western Transportation Company is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in this behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this thirtieth day of July, in the year of our Lord one thousand eight hundred and sixty nine.

THOMAS DRUMMOND.

140 UNITED STATES OF AMERICA,
Northern district of Illinois:

Before me, this day, came Israel N. Stiles, who, first being duly sworn, upon his oath, says that on the 28th day of July, 1869, he served the within citation upon the within-named Sam'l A. Downer, by delivering to him a true copy thereof, and further says not.

I. N. STILES.

Subscribed and sworn to before me this 28th day of July, 1869.

W'M H. BRADLEY, *Clerk.*

141 Supreme Court of the United States.

THE WESTERN TRANSPORTATION COMPANY
vs.
SAMUEL A. DOWNER.

Of the December term, in the year of our Lord one thousand eight hundred and sixty-nine.

Afterwards, to wit, on the first Monday of December, in this same

term, before the justices of the Supreme Court of the United States, at the Capitol in the city of Washington, comes the said The Western Transportation Company, by J. N. Jewett, its attorney, and says that in the record and proceedings aforesaid, there is manifest error in this, to wit: the said circuit court erred in refusing to give the instruction to the jury asked on behalf of the said Western Transportation Company on the trial of said cause. The said circuit court refused proper instructions and charges to the jury, asked on behalf of the said Western Transportation Company on the trial below. The said circuit
142 court gave improper instructions to the jury on behalf of said Samuel A. Downer, on the trial of said cause. The said circuit court erroneously charged the jury in respect to the burden of proof in said cause. The said circuit court improperly expressed to the jury the opinion of the court as to questions of fact. The several charges of the said circuit court to the jury, on the trial of said cause, are and each of them was and is erroneous; that by the record aforesaid, it appears that the judgment aforesaid given, was given for the said Samuel A. Downer, and against the said Western Transportation Company; whereas, by the law of the land, the said judgment ought to have been given for the said Western Transportation Company, and against the said Samuel A. Downer. And the said Western Transportation Company prays that the judgment aforesaid may be reversed, annulled, and altogether held for nothing, and that it may be restored to all things which it hath lost by occasion of the said judgment, &c.

JOHN N. JEWETT,
Attorney for Plaintiff in Error.

(Indorsed:) Supreme Court of the United States. The Western Transportation Company vs. Samuel A. Downer. Assignment of error.
(Indorsed:) U. S. Cir. Court. Downer vs. The Wes. Trans. Com. Citation.

(Indorsement on cover:) No. 292. The Western Transportation Company, plaintiff in error, v. Samuel A. Downer. N. Illinois, C. C. U. S.
Filed November 26, 1869.

Supreme Court of the United States

No. 292.

THE WESTERN TRANSPORTATION COMPANY,

Plaintiff in Error,

vs.

SAMUEL A. DOWNER.

J. N. JEWETT,

Attorney for Plaintiff in Error.

REPUBLICAN PRINT, 93 WASHINGTON STREET, CHICAGO.

Supreme Court of the United States

No. 302

THE WESTERN TRANSPORTATION COMPANY,

Plaintiff in Error,

vs.

SAMUEL A. DOWNER.

IN ERROR.

Supreme Court of the United States

No. 292.

THE WESTERN TRANSPORTATION COMPANY,
Plaintiff in Error,
vs.
SAMUEL A. DOWNER.

This suit was originally commenced by the defendant in error in the Superior Court of Chicago; from thence it was transferred to the Circuit Court of the United States for the Northern District of Illinois.

The plaintiff sought the recovery of the value of eighty-four bags of coffee which the Western Transportation Company, defendant, as a common carrier, had undertaken to transport from New York to Chicago, and had failed to deliver in good order and condition, whereby the same became lost to plaintiff, &c. The coffee in question was shipped on board the propeller Buffalo, which, in the attempt to enter the harbor of Chicago, on the night of the 31st of August, 1867, at about 8 o'clock, struck upon the bottom, sprung a leak, and the coffee was so damaged by water as to become worthless. The vessel was staunch and strong. Her master, Capt. Drake, was a pilot of the first class, and had had eighteen years' experience upon the lakes, nine years of which he had been master of a vessel. (Drake's tes. pp. 14 and 15 printed Record.)

A copy of the bill of lading was set out in the declaration and the original was offered in evidence upon the trial. (pp. 7 and 12 p. record.)

By this bill of lading the carrier was exempted from liability for those losses which might be occasioned by the "dangers of navigation on the lakes and rivers." The defense in this case was, that the loss of the coffee in question came within this exception embraced in the bill of lading, which was the contract between the parties.

The case was twice tried in the Circuit Court. The first trial was before Judge Drummond, and resulted in a disagreement of the jury. Upon the second trial, Judge Miller, of the District Court of Wisconsin, presided. The jury found a verdict for the plaintiff. The defendant's motion for a new trial was over-ruled, and judgment was entered.

The record shows that upon this trial the plaintiff in the court below having shown that the defendant had the coffee for transportation, and that the same was lost, the defendant then showed by competent evidence that the loss was occasioned by the "dangers of navigation." The plaintiff then endeavored to prove that this danger and the consequent loss might have been avoided by the exercise of proper care and skill. "At "this stage and posture of the case the burden was upon the "plaintiff to establish the negligence."

Muddle vs. *Stride*, 9 Car. & Payne, 380.

Clark, et al. vs. *Barnwell, et al.*, 12 Howard, 280.

Accordingly the defendant moved the court to instruct the jury as follows: "If the jury believe from the evidence that

"the loss of the coffee in controversy was within one of the "exceptions contained in the bill of lading offered in evidence, "that is to say, if it was occasioned by perils of navigation of "the lakes and rivers, then the burden of showing that this loss "might have been avoided by the exercise of proper care and "skill is upon the plaintiff, then it is for him to show that the "loss was the result of negligence." (p. 51 p. record.)

The court refused to give this instruction, but at the request of the plaintiff, gave instead, the following, to the giving of which the defendant also excepted, viz:

"The bill of lading in this case excepts the defendant from "liability when the property is *not* insured, from perils of "navigation. It is incumbent on the defendant to bring itself "within the exception, and it is the duty of the defendant "to show that they have not been guilty of negligence." (p. 52 p. record.) Under the law as laid down by this court in the case of *Clark* vs. *Barnwell*, above cited, it is believed that the plaintiff in error may justly complain of the refusal of the court below to give the instruction asked for, as well, also, of the giving of the instruction last above quoted. This position is still further sustained by the opinion of this court in the case of *New Jersey Steam Nav. Comp.* vs. *Merchants Bank*, 6 Howard, 284.

This instruction was also given by the court below, (Judge Miller presiding), viz: "If the propeller was about to enter "the harbor after dusk in the evening, the wind blowing fresh "from the *southeast*, but not a heavy gale, and the vessel "touched and would not steer, the master should have made an "effort to do one of three things, to back, or to put out to sea,

"or take a new course. It is for the jury to say whether he "did his duty. *I don't think he did*, but the facts are submitted "to you."

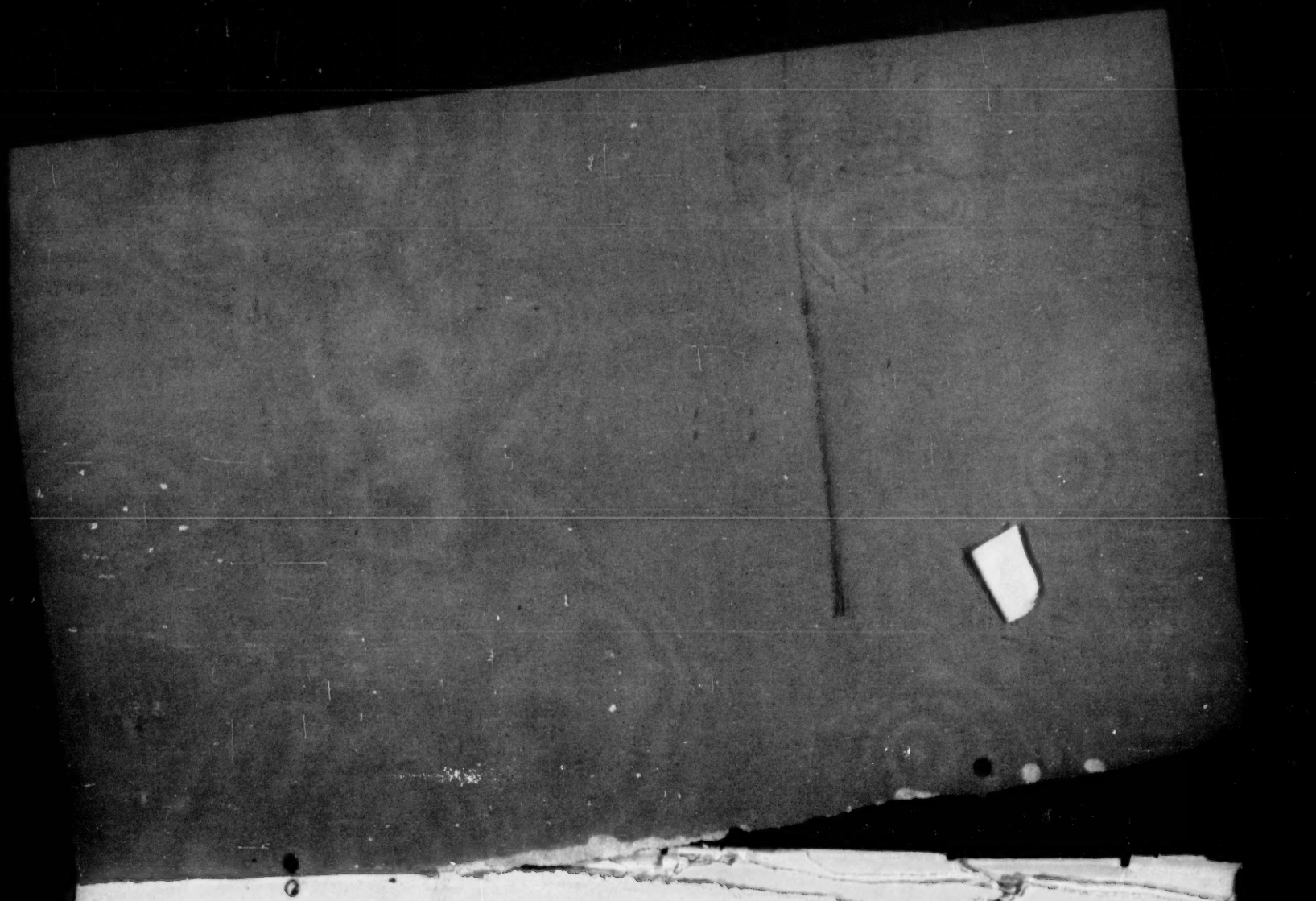
The wind, at the time referred to, was blowing from the *northeast;* had been blowing from that quarter since about 3 or 4 o'clock of that afternoon, and continued so to blow all of that night and of the next day. (Testimony of Captain Tuttle, p. 19 P. Rec.) There is no conflict of evidence on that point.

The court (Judge Miller presiding,) having instructed the jury as to what was the duty of the master of the vessel, so clearly, it is insisted that the jury should have been allowed to determine the fact whether or not he did his duty, uninfluenced by the opinion of the court.

Chesapeake & Ohio Canal Co. vs. *Knapp et al.*, 9 Peters, 567.

It is respectfully submitted that the judgment of the court below ought to be reversed.

J. N. JEWETT,
Attorney for Plaintiff in Error.



Supreme Court of the United States.

THE WESTERN TRANSPORTATION COMPANY,
Plaintiff in Error,

vs.

SAMUEL A. DOWNER.

Brief on the part of the Plaintiff in Error.

GEORGE B. HIBBARD, *for Plaintiff in Error.*

This was an action in which the plaintiff sought to recover against the defendant, the Western Transportation Company, for damage to certain coffee, which the company had undertaken to transport from New York to Chicago. The company was a common carrier. The coffee, at the time of the damage done to it, was on board the propeller Buffalo. The propeller was the property of the company. She was under the command of an entirely competent and experienced master, and was in all respects seaworthy, properly equipped, &c., &c.

A copy of the bill of lading under which the property was carried is set forth at page 7 of the record. It provides, in substance, that the company shall not be liable for "losses or damages on goods which are insured," or for "~~damages~~ danger of navigation on the lakes and rivers, damages or loss by collisions," &c., &c.

The property received its damage as the vessel was about to enter the harbor at Chicago.

The company established that this damage arose from a danger of navigation—from the vessel touching the bottom, becoming so she would not steer, getting aground, pounding, and water entering her hold. (*Record*, *p.* 14.) The plaintiff in the case, under familiar rule, could not recover, unless he could show that the injury, the touching the bottom, &c., arose from negligence or incapacity upon the part of the officers of the propeller. The burden of proof was on the plaintiff to establish such negligence or incapacity.

The questions in the case arise upon exceptions to the charge of the judge. The cause was tried before Judge A. G. Miller, District Judge of the District of Wisconsin, and was tried at the Circuit held at Chicago, in March, 1869.

POINT FIRST.

The judge erred in refusing to charge the jury as requested by the counsel for the defendant, in the court below.

I. The counsel for the defendant requested the judge to charge the jury, that, if they believed from the evidence, that the loss of the coffee was within one of the exceptions contained in the bill of lading; that is to say, if it was occasioned by a peril of navigation of the lakes or rivers, then the burden of showing that the loss might have been avoided by the exercise of proper care and skill was upon the plaintiff—it was for him to show that the loss was the result of negligence.

The court refused to so charge, and the defendant's counsel excepted. (*Record, pages* 51, 52.)

II. This refusal was error, upon principle, and as is well established by abundant authority.

The whole doctrine is most clearly stated by this court in

Clark vs. Barnwell, 12 *Howard*, 272, 280.

In delivering the opinion of the court in that case, Mr. Justice NELSON employs the following language: "After the damage to the goods, therefore, has been "established, the burden lies upon the respondents to "show that it was occasioned by one of the perils "from which they were exempted by the bill of lading, "and, even where evidence has been thus given, bring- "ing the particular loss or damage within one of the "dangers or accidents of the navigation, it is still com- "petent *for the shippers to show* that it might have "been avoided by the exercise of reasonable skill and "attention on the part of the persons employed in the "conveyance of the goods; for, then, it is not deemed "to be, in the sense of the law, such a loss as will "exempt the carrier from liability, but rather a loss "occasioned by his negligence and inattention to his "duty. Hence it is, that, although the loss occurs by a "peril of the sea, yet if it might have been avoided by "skill and diligence at the time, the carrier is liable. "*But in this stage and posture of the case, the burden is* "*upon the plaintiff to establish the negligence, as the* "*affirmative lies upon him.*"

The principle has been recognized and established in numerous other cases. See

Hume vs. The Cleveland, Newberry's R., 221.
The Neptune, 6 *Blatchford*, 193.
American Law Review, January, 1871, *p.* 212.

POINT SECOND.

The court erred in charging the jury as it did, with respect to the burden of proof in the case. (*Record, p.* 52.)

This affirmative charge is erroneous, upon the same grounds as was the refusal to charge as requested by the defendant's counsel. In charging as the court did, that it was incumbent on the defendant to prove itself within the exception; and adding, that it was the duty of the defendant to show that it was not guilty of negligence, the court most plainly, and most erroneously, misdirected the jury, as appears by the authorities above referred to. The burden of proving the negligence, of establishing the fact of negligence, if it existed, was on the plaintiff. In an equipoise of testimony, or in case of doubt as to the existence of the negligence, the plaintiff could not recover. See

Authorities cited under Point First.

POINT THIRD.

The court erred in charging the jury as to the duty of the master of the propeller. (*Record, p.* 52.)

The court charged the jury substantially, that it was the duty of the master "to do one of three things: to "back, or to put out to sea, or to take a new course."

Whether the master did his duty, the court left to the jury, expressing, however, an opinion on the subject so strong, so decided, that it may well be claimed to be error. *But what was the duty of the master, the court did not leave to the jury.* They were specifically directed as to what that duty was. Certainly that was not a question of law. What was the duty of the master, what it was proper for him to do under the circumstances, was the very question for the jury, the question as to which experts were called. Certainly it was not within the province of the court to decide that the master should do one of the three things, one of which it charges it was his duty to do. The charge confines the consideration of the jury to the three things stated, one or the other of which the court charges, it was the duty of the master to do. The whole question of the propriety of the master's conduct, the whole question of what was his duty, certainly was not left to the jury. It certainly was not competent for the court to charge the jury, as it did in substance, that it was not the duty of the master to do precisely as he did do. (*Record, p.* 14.) This part of the charge was plainly erroneous.

Greenleaf vs. Birth, 9 *Peters*, 292.
Blackburn vs. Crawford, 3 *Wallace*, 175, 195.

GEORGE B. HIBBARD,
For Plaintiff in Error,
Buffalo, N. Y.

Supreme Court of the United States.

THE WESTERN TRANSPORTATION COMPANY,
Plaintiff in Error,

vs.

SAMUEL A. DOWNER.

ARGUMENT FOR DEFENDANT IN ERROR.

The plaintiff in error is a common carrier, and this was a suit against it for the loss of eighty-four bags of coffee.

At the trial the plaintiff proved the delivery of the coffee to the plaintiff in error in good order; and its receipt by the consignee in a damaged condition. On this state of facts it rested on the plaintiff in error to show that the loss occurred through a cause for which he was not liable. He who alleges an exception must bring himself within it. The bill of lading excepted liability for losses occasioned by "dangers of navigation on the lakes and rivers," and it was incumbent on the carrier to prove that the loss occurred from one of such excepted dangers. He could not do that unless he showed also that the loss occurred without negligence on his part. This the plaintiff in error utterly failed to do at the trial. On the contrary, the evidence shows that the channel of entrance into the port of Chicago is narrow and shifting, liable to change from year to year, or even in a single storm (p. record, pp. 15, 16); that it had, in fact, changed a good deal

during the two seasons previous to this accident (p. record, p. 24); that the captain of the plaintiff in error's vessel had not entered the port for about two years previous to this trip (p. record, p. 15); that he undertook to enter at a time and under circumstances requiring the utmost knowledge and skill, to wit, on a dark and stormy night (printed record, pp. 14, 15, 20); that another vessel, drawing more water, had come safely into port somewhat later the same night (p. record, p. 20); and that a prudent navigator, under the circumstances, would have signalled for a tug, or, failing to get one, would have anchored, or laid off and on until morning, (p. record, p. 27).

The evidence, therefore, shows that the verdict was right; and this court should sustain it, unless the instructions of the court below were so erroneous as to imperatively require a reversal of the judgment.

The assignments of error are three:

I. The refusal of the court to charge, as requested by the plaintiff in error, that "if the jury believe from the evidence that the loss of the coffee in controversy was within one of the exceptions contained in the bill of lading offered in evidence—that is to say, if it was occasioned by perils of navigation of the lakes and rivers, then the burden of showing that this loss might have been avoided by the exercise of proper care and skill is upon the plaintiff; then it is for him to show that the loss was the result of negligence." (p. 51, printed record.)

II. The charge of the court that "the bill of lading in this case excepts the defendant from liability, when the property is not insured, from perils of navigation. It is incumbent on the defendant to bring itself within the exception, and it is the duty of the defendant to show

that they have not been guilty of negligence." (p. 52, p. record.)

III. The instruction to the jury—"If the propeller was about to enter the harbor after dusk in the evening, the wind blowing fresh from the *northeast*, but not a heavy gale, and the vessel touched and would not steer, the master should have made an effort to do one of three things—to back, or to put out to sea, or to take a new course. It is for the jury to say whether he did his duty. I don't think he did, but the facts are submitted to you."

I. and II. The first and second exceptions amount in substance to the same thing—that the court below erred in instructing the jury that the burden of proof was on the carrier to show due care, and not on the plaintiff, to show the want of it.

It is submitted that the instruction was right.

Prima facie, the carrier is an insurer, and is liable unless the loss occurred through an act of God, or of the public enemy. The terms act of God, or of public enemies, mean such acts as constitute an overruling and irresistible force, against which the carrier's skill and diligence are of no avail. The burden of proving all these elements of the acts rests upon the carrier. This is his common law liability and its exception. When a special contract adds another exception, as in this case, "dangers of navigation on the lakes and rivers," the same rule must obtain. The "dangers of navigation" are such dangers as skill and diligence cannot provide against. The carrier does not bring himself within the exception, unless he shows that he used skill and diligence. The burden is on him to show all the elements which are required to make up the exception which relieves

him; not merely the accident, but his freedom from negligence contributory to it. Proof that the vessel ran aground, and sprang a leak, whereby the coffee was damaged, does not prove that she ran aground by a danger of navigation. On the contrary, the accident of itself raises a presumption of negligence.

The weight of authority is in favor of the instruction complained of.

"If the acceptance of the goods was special, the burden of proof is still on the carrier to show, not only that the cause of the loss was within the terms of the exception, but also that there was on his part no negligence or want of due care:" 2 Greenleaf on Evidence, sec. 219.

In *Whitesides* vs. *Russell*, 8 Watts and Serg. 44, a steamboat ran on a rock in the Ohio river and knocked a hole in her bottom, whereby her cargo was damaged. The bill of lading excepted losses by "dangers of the river," and the carrier was held to have the *onus* of proving, not only how the loss occurred, but that he had used due diligence and skill.

So also in *Hays* vs. *Kennedy*, 41 Penn. St. Rep. 378, where LOWRIE, C. J., says: "From the very nature of the relation the burden of the proof of a loss by inevitable accident is thrown upon the carrier. He must prove not only an accident which the law admits as inevitable in its character, *but also that he was guilty of no fault in falling into the danger*, or in his efforts to extricate himself from it."

In *Graham* vs. *Davis*, 4 Ohio St. Rep. 362, the Supreme Court of Ohio decided this precise point. The case was ably argued and elaborately considered both on principle and on authority, and the decision is entitled to great weight. The reason of the decision is stated by RANNEY,

J., with great clearness: "Counsel for the plaintiffs in error admit that it was incumbent upon them to have shown that the goods were lost by one of the excepted perils; but they insist that the burthen of proof was then shifted upon the owners, and that they were bound to prove negligence before the carriers could be charged. We think this dividing a thing in its nature indivisible. Either the loss was occasioned by a peril of navigation, or by the negligence of those in charge of the boat. It must have been one or the other, and could not have been both. If proper care could have avoided it, it was not a peril incident to navigation; if such care could not, it was. From the very nature of the undertaking, without care the loss was inevitable; and with care it might be unavoidable. From the failure to deliver the goods, the law raised the presumption of negligence against the carriers—*prima facie*, the fault was theirs—and this presumption could only be rebutted by showing that they were without fault. As positive care was indispensable to the safety of the goods, they could meet and overthrow the legal presumption of negligence in no other way than by showing that such care was exercised. Proof that the boat was snagged, fell short of proving that it was not snagged by the fault of those in charge of it; and, consequently, short of overcoming the *prima facie* case of the plaintiffs below. To do this, it was not enough to have shown that the loss was occasioned by what might or might not have been a danger of navigation; nothing short of proof that it was the one and not the other could have been sufficient; as nothing short of that could bring the case within the exception provided for in the contract."

This rule is well established also in other States. *Swindler* vs. *Hilliard*, 2 Rich. 268; *Baker* vs. *Brinson*, 9 Rich. 201; *Berry* vs. *Cooper*, 28 Geo. 543; *Turney* vs. *Wilson*, 7 Yerg. 340. Hill v. Sturgeon 28 Mo. 327.

The case of *Clark* vs. *Barnwell*, 12 Howard, 272, is relied on by the plaintiff in error, as authority for the position that it is sufficient for the carrier to show an accident, which may or may not be a danger of navigation (that is such a danger as reasonable skill and care could not avoid), to put on the plaintiff the burden of proving negligence. If the case can be considered as deciding so broad a proposition, then it is erroneous in principle and against the great weight of authority. It is supported only by a Nisi Prius opinion of Lord Denman, and the cases in the United States courts, which have followed it as authority, without examining the ground upon which it rested. The principal State courts in which it has been cited have refused to follow so clear a departure from established principles.

But the decision does not in reality go to the extent claimed. In that case, the carrier *proved affirmatively* that his ship was tight and staunch, well equipped and manned, and that the cargo was well stowed and dunnaged (opinion of Nelson, J., p. 281). He, in fact, proved all the elements of the proper skill and care on his part. The case was argued and decided on the *evidence*, not on the burden of proof. The subject of the burden of proof was not argued at all, and the remarks of the court upon it were not necessary to the result arrived at. The decision was right on the evidence, and it is fairly inferrible from the report, that all that was meant to be laid down as to the burden of proof was, that *after the carrier had proved due care and skill* (which he had done in that case), the plaintiff was still at liberty to rebut that evidence, and assume the burden of proving negligence. This is unexceptionable doctrine, and the case is authority for so much, but not for anything more.

III. The word "*southeast*," on page 52 of the printed record, line 20 from the top, is a misprint for "*northeast*," which is in the original record. The first paragraph of page 4 of the argument for plaintiff in error is therefore inapplicable, as it is based upon an erroneous statement of what is contained in the bill of exceptions. The substance of the exception is the expression of opinion of the judge to the jury on the facts. This is not an error for which this court will reverse. The opinion was not intended to be binding on the jury, nor could it be so construed. On the contrary, the decision was expressly left to the jury. The language of the judge was: "It is *for the jury* to say whether he did his duty. I don't think he did, *but the facts are submitted to you.*" In this there was no error. *Tracy* vs. *Swartwout*, 10 Peters, 80; *Garrard* vs. *Reynolds*, 4 Howard, 127.

Upon this whole record, therefore, it is respectfully submitted that the judgment of the court below was right, both in principle and on authority, and it should be affirmed.

JAMES T. MITCHELL,
for Defendant in Error.

Supreme Court of the United States.

1870

October Term, 1869. No. 95.

THE WESTERN TRANSPORTATION COMPANY,

vs.

[illegible] A. BOWKER.

ASSIGNMENT FOR DEFENDANT IN ERROR.

No 257 - Clark et al v. Steamer Admiral Farragut
Page 154.

Diagram

B.B.

H.P. Com's'r.

BROWN COUNTY

W.

Point.

Rail Road Dam

Bank of Illinois River

Stone Abatment

R.R. Bridge

West Pier

Piling

Course intended to be pursued by Pilot

Position No 2. When the boat commenced actually to back

Position No 1. Showing the position of the boat when an effort was made to back her

Bed of Illinois River

Position No 3. when she started ahead

Position No 4.

Position No 5.

No 6. Position at the time of collision.

Admiral Farragut

Ajax

R.R. Bridge swung open for the passage of boats.

Center Pier

Piling

Piling

H

I

Water

B. Pier

Lower Dock

2

W.

Point

Island

LAKE

Upper Dock

2

No 257 Clarke vs Steamer Admiral Farragut
Page 193-

2

G. W. R. R. Bridge

Pier

Water

Piling

R.R. Bridge swung open for the passage of boats.

Center Pier

Piling

Admiral Farragut

Ajax

Position at the time of collision

No 6.

Lower Dock

Merrydeath

Barrage according to the testimony of Dunn

of

Mart. 2.98.

Epp

Eads

H

I

Eddy

LAKE

Island

60 feet wide in high water

Course of the Farraguts

Piling

H

I

Upper Dock

Lower Dock

Course of Farraguts according to the testimony of Dunn

Meredosia

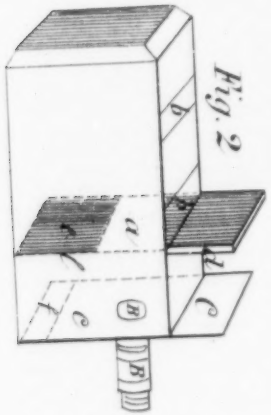
Wreck of Martha as located by Witness Dunn.

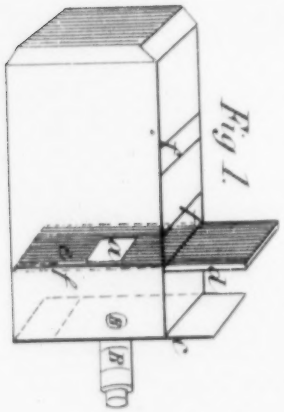
Locality of docks according to Dunn

Scale: 1/4 inch to 10 feet.

Simon Wing Appt
No. 494 vs.
Christopher C. Schoonmaker.

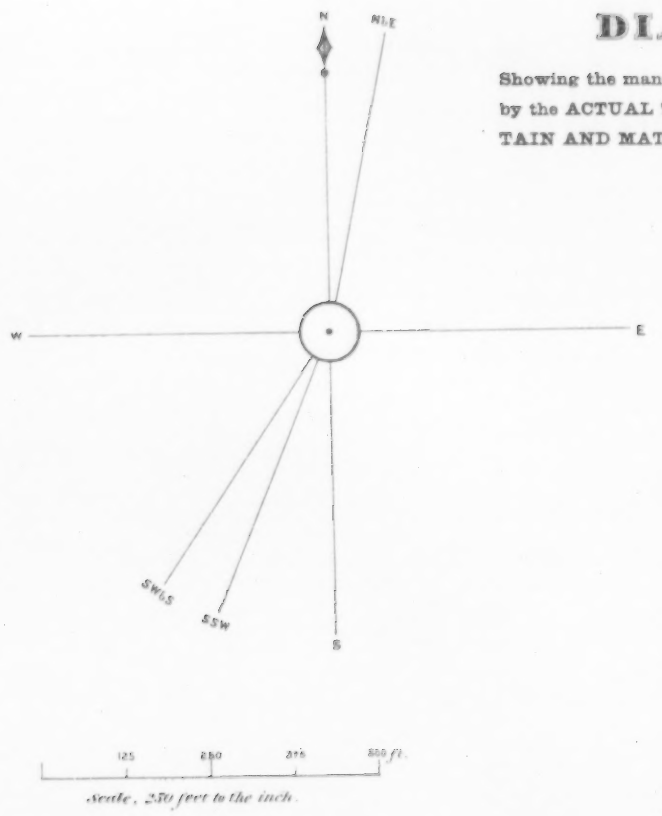
Page 226.

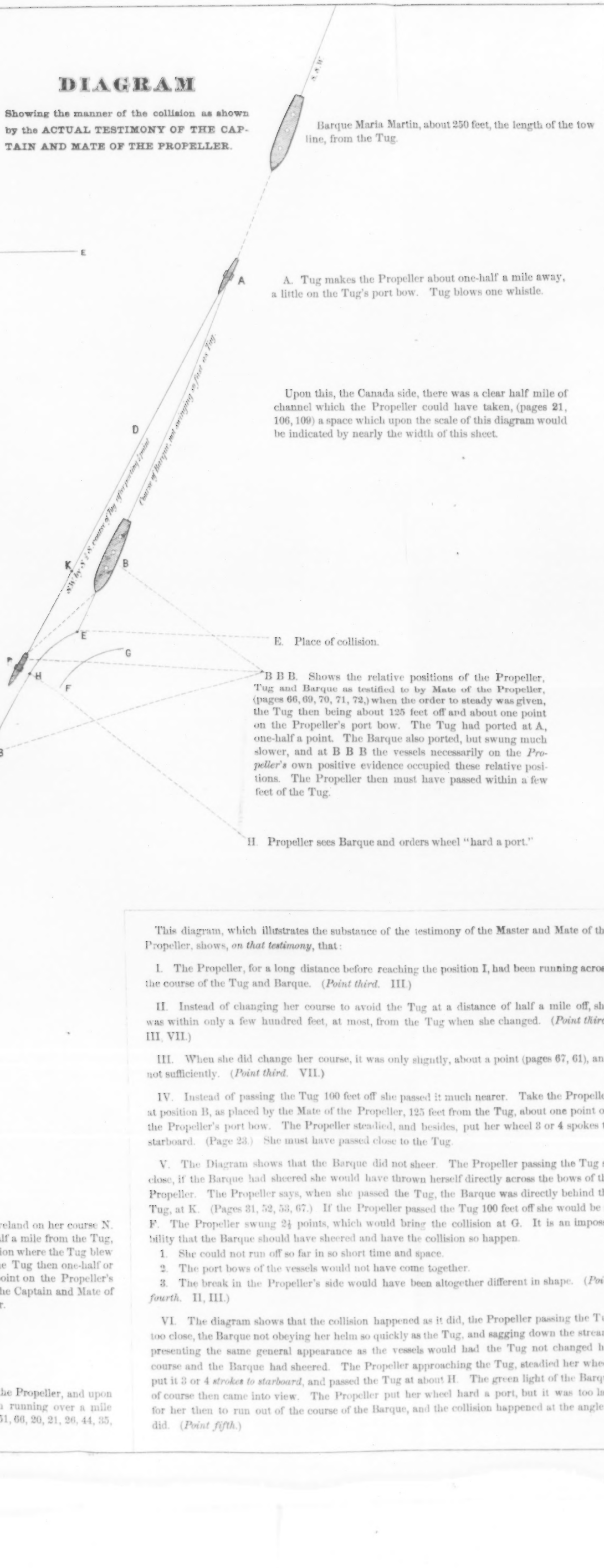




DIAGRAM

Showing the manner of the collision as shown by the ACTUAL TESTIMONY OF THE CAPTAIN AND MATE OF THE PROPELLER.





This diagram, which illustrates the substance of the testimony of the Master and Mate of the Propeller, shows, *on that testimony*, that:

I. The Propeller, for a long distance before reaching the position I, had been running across the course of the Tug and Barque. (*Point third.* III.)

II. Instead of changing her course to avoid the Tug at a distance of half a mile off, she was within only a few hundred feet, at most, from the Tug when she changed. (*Point third.* III, VII.)

III. When she did change her course, it was only slightly, about a point (pages 67, 61), and not sufficiently. (*Point third.* VII.)

IV. Instead of passing the Tug 100 feet off she passed it much nearer. Take the Propeller at position B, as placed by the Mate of the Propeller, 125 feet from the Tug, about one point on the Propeller's port bow. The Propeller steadied, and besides, put her wheel 3 or 4 spokes to starboard. (Page 23.) She must have passed close to the Tug.

V. The Diagram shows that the Barque did not sheer. The Propeller passing the Tug so close, if the Barque had sheered she would have thrown herself directly across the bows of the Propeller. The Propeller says, when she passed the Tug, the Barque was directly behind the Tug, at K. (Pages 31, 52, 53, 67.) If the Propeller passed the Tug 100 feet off she would be at F. The Propeller swung 2½ points, which would bring the collision at G. It is an impossibility that the Barque should have sheered and have the collision so happen.

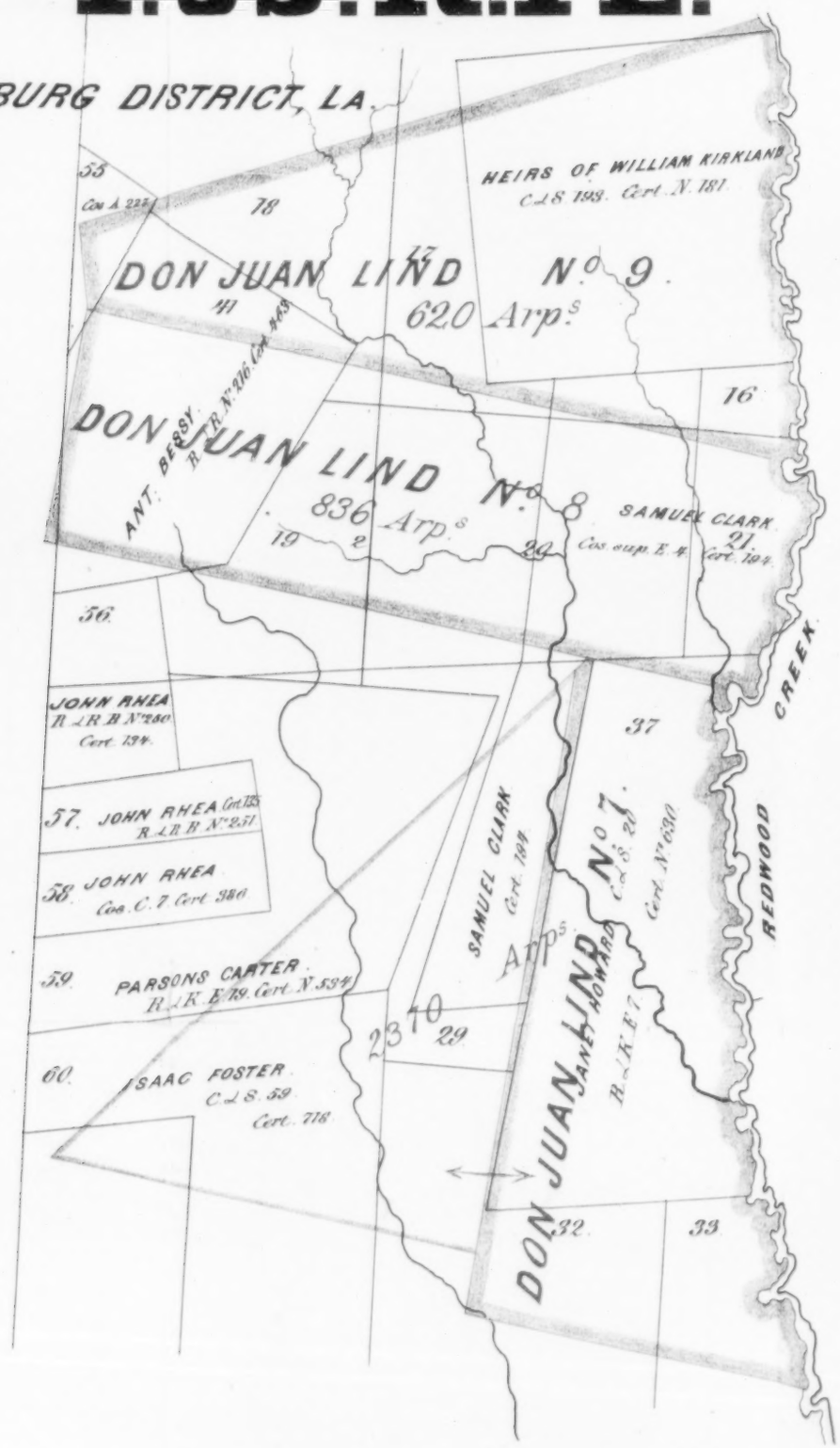
1. She could not run off so far in so short time and space.
2. The port bows of the vessels would not have come together.
3. The break in the Propeller's side would have been altogether different in shape. (*Point fourth.* II, III.)

VI. The diagram shows that the collision happened as it did, the Propeller passing the Tug too close, the Barque not obeying her helm so quickly as the Tug, and sagging down the stream, presenting the same general appearance as the vessels would had the Tug not changed her course and the Barque had sheered. The Propeller approaching the Tug, steadied her wheel, put it 3 or 4 *strokes to starboard*, and passed the Tug at about H. The green light of the Barque of course then came into view. The Propeller put her wheel hard a port, but it was too late for her then to run out of the course of the Barque, and the collision happened at the angle it did. (*Point fifth.*)

N
W
E
S
BOIS BLANC ISLAND
Light House
Barque
Tug
S.S.W.
Barque
Propeller
Tug
S.W. by S. ½ S.
Propeller
N. by E.
UPPER CANADA
LAR POINT
LAKE ERIE

T.3S.R.1E.

GREENSBURG DISTRICT, LA.



N.º 275. U. States vs. Lynds' heirs.
N.º 10. Page 358.

U. S. Land Office.
New-Orleans, La. June 27th 1868.

I certify, that there are no vacant lands belonging to the United States within the lines marked red and purporting to represent the unconfirmed Claims of Don Juan Lynd.

Signed: Jno S. Tully
Register.

I John Lynch, Surveyor General of Louisiana certify, that the lands represented on the map as portions of Claim of John Lynd, Nos 7, 829, cannot be satisfied or surveyed and located, because of superior titles emanating from the United States.

New Orleans, 5th Augt 1869.

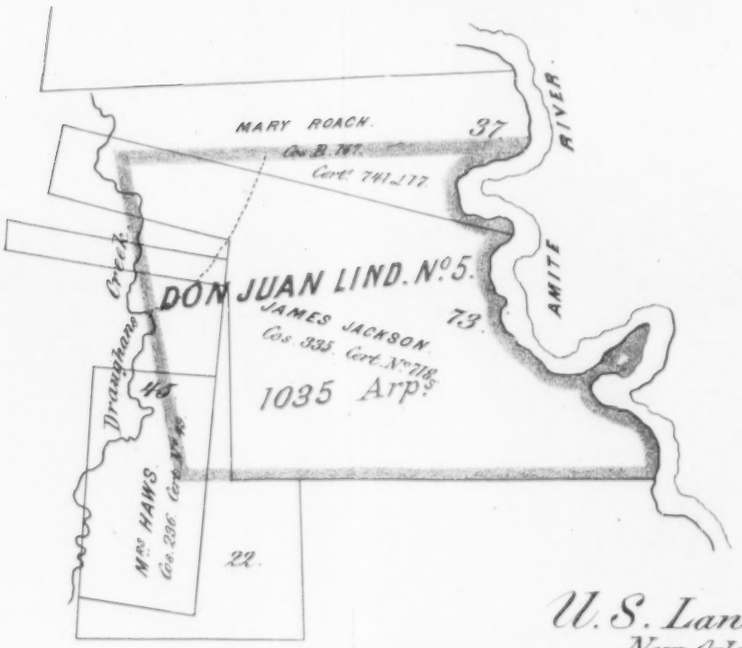
John Lynch
Surveyor Gen-L.

N°275. U. States vs. Lynd's heirs.

N°8. Page 358.

T.6S.R.2E.

GREENSBURG DISTRICT, LA.



I John Lynch, Surveyor General of Louisiana, certify that the lands represented on this map as portion of the Claim of John Lynd, N°5 cannot be satisfied or surveyed & located, because of superior titles emanating from the United States.

New-Orleans, 5th August 1869

John Lynch
Surveyor General La.

U. S. Land Office.
New-Orleans La. June 29th 1868.

I certify that there are no vacant Lands belonging to the United States within the red lines purporting to represent the Claim of Don Juan Lind, in T. 6 S. R. 2 E. Greensburg District.

(Signed) Jno. I. Tully
Register &

No. 275. U. States vs Lynd's heirs.
No. 9. Page 358.

T. 6 S. R. 1 E.

GREENSBURG DISTRICT, LA.

No. 5.
Plan E.
Filed July 1st 1868.
Signed: K. Loew,
Dy. Clerk.

U. S. Land Office.
New Orleans, La. June 29th 1868.

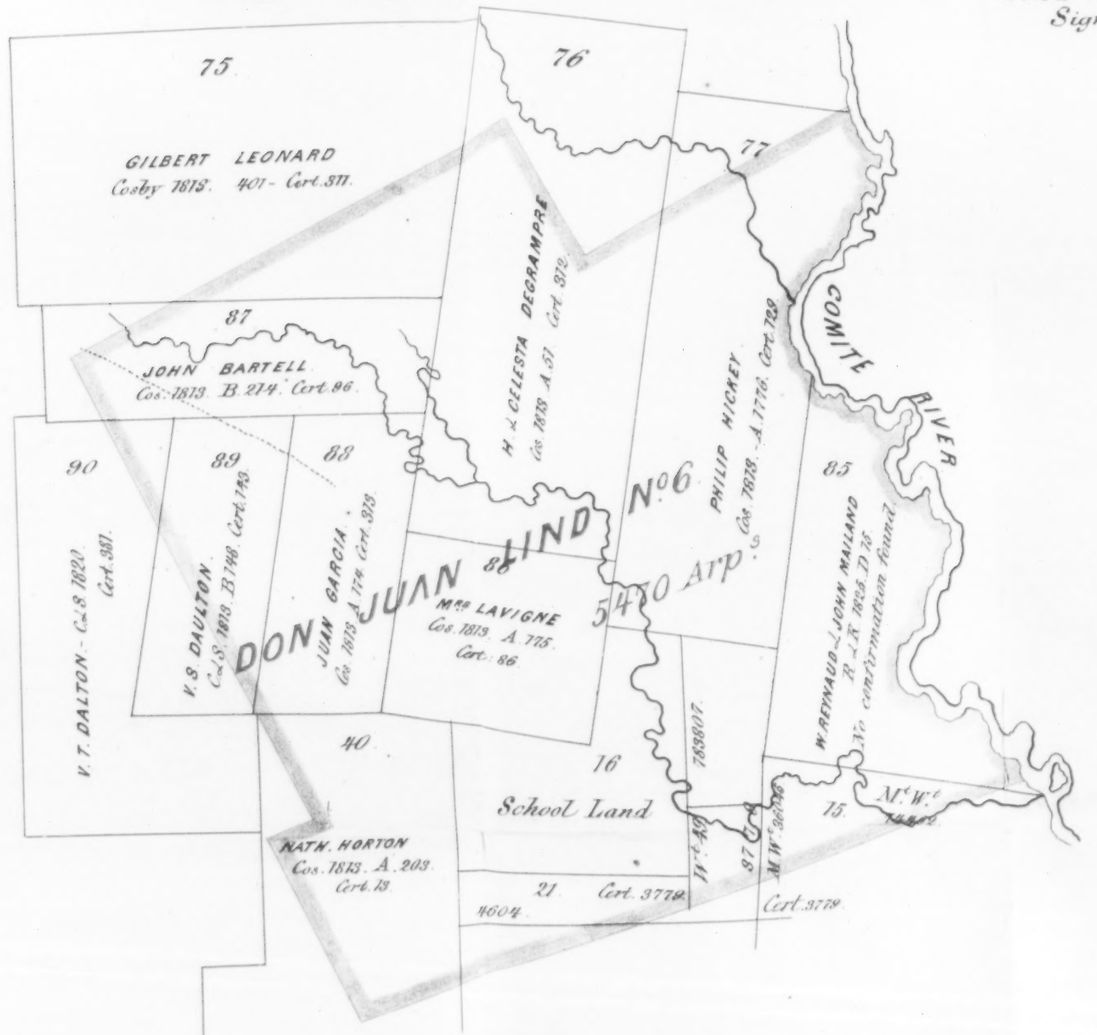
I certify, that there are no vacant public lands belonging to the United States, within the red lines purporting to represent the unconfirmed Claim of Don Juan Lind..

(Signed) John S. Tulley
Register.

I John Lynch, Surveyor General of Louisiana, certify that the Lands represented on this map as portions of the Claim of John Lynd No. 6 - cannot be satisfied or surveyed & located, because of superior titles emanating from the United States.

New Orleans, 5th August 1869.

John Lynch
Surveyor General.



No. 275. U. States vs. Lynd's heirs.

No. 7. Page 358.

T. 4 S. R. 3 E.

T. 5 S. R. 2 E.

T. 5 S. R. 3 E.

GREENSBURG DISTRICT, LA.

DON JUAN LIND No. 1. 3780 Arp.

DON JUAN LIND No. 2. 2430 Arp.

DON JUAN LIND No. 3. 3780 Arp.

DON JUAN LIND No. 4. 310 Arp.

JOHN TRIMMELL, Cert. No. 78

NORRIS FAUSTER under JOSHUA WINING. Cas. exp. 774

Claimed by HUGH MONTGOMERY.

67. HEIRS of NANCY HULSON B. & R. F. 12. Cert. 457.

ELISHA T. HALL. 70. under FRANCIS MILLIM. Cas. 336. Cert. 788.

WILLIAM PULLIAM Cas. 327 Cert. 336

JOSEPH CHARLES HUBBS under ELISHA T. HALL. 39 GEORGE NIGHT Cas. 328

TERENCE O REILEY C. & S. 266. Cert. 16

C. & S. 291. Cert. 52

ELISH T. HALL under ANDREW HAMBLETON Cas. 353 Cert. 36

ANDREW HAMBLETON

JOHN BARTEL under AMOS THAMES. C. & S. 80. Cert. 486

HENRY COLLINS. Cooby B. 153. Cert. No. 93.

SANDY CREEK.

AMITE RIVER.

U.S. Land Office.
New-Orleans, La.
June 29. 1868.

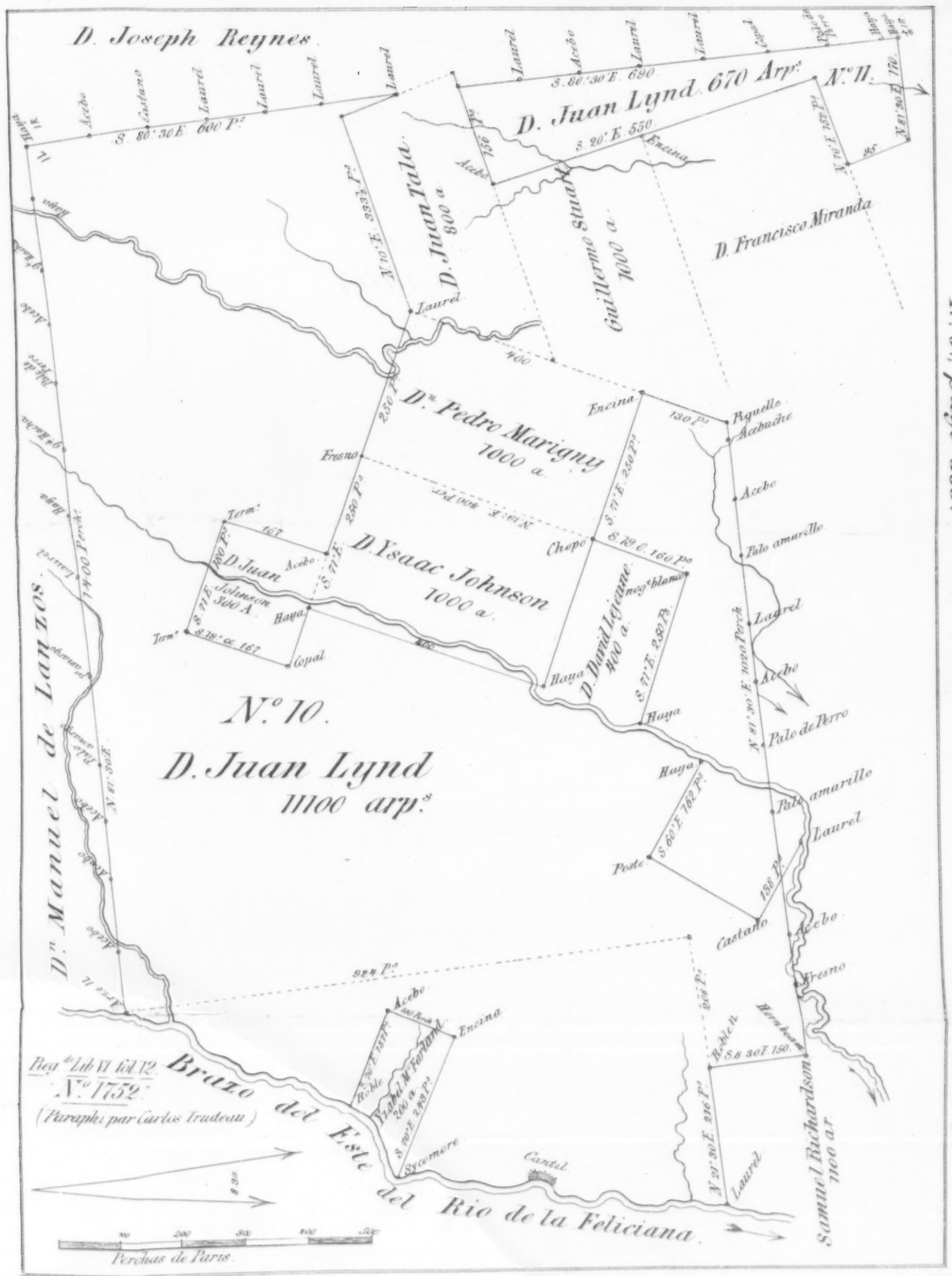
I do certify, that there are no vacant lands belonging to the United States, within the red lines purporting to represent the unconfirmed Claims of Don Juan Lynd, in the above designated Townships.

(Signed) Jno. S. Fully
Register, &c.

I John Lynch, Surveyor General of Louisiana, certify that the Lands represented on this map as portions of the Claim of John Lynd, No. 1, 2, 3 & 4, cannot be satisfied or surveyed and located, because of superior titles emanating from the United States.

New-Orleans, 5th August 1869.

John Lynch
Surveyor General La.



N.o 275. U. States vs. Lynd's heirs.
N.o 5., page 358.

T.1S.R.1W. T.1S.R.1E.

GREENSBURG DISTRICT, LA.

N°.275. U. States vs. Lynd's heirs.
N°.6. Page 358.

U. S. Con.d Land Office.
New-Orleans, La.
May 1st 1867.

I do hereby certify, that the Red lines on the above Plat represent the boundaries of Lots 10 & 11 of the Juan Lynd claim, Reports N°.19, containing together 11.770 Arpents (See Vol. III of American State papers (Duff Greens edition, page 54) and that there are no vacant lands within said boundaries, - said claim was unfavorably reported on by James O. Cosby, Commissioner.

In faith of which, I have signed the above officially at New-Orleans, date above written.

(Signed) John S. Tully
Register.

NEEDHAM MARSH. Cos. 1813 - 767. 72.
N. MARSH. Cert. 1820 - 67. Cert. 192.
PIERRE NOLAND SENIOR. Cos. 222. Cert. 137. 44.
ROBT. McCALISLIN. 38.
SOLOMON BONDS. Cos. 1813 - 237. Cert. 418. 50.
JOHN JOHNS. C. & S. 256. Cert. 97. 47.
Wm. SCOTT, JUN. Cos. 269. Cert. 771. 46.
JAMES SCOTT. Cos. 314. Cert. 601. 45.
STEPHEN WINTER. 43.
EDMUND WEST. Cos. 203. Cert. 69. 42.
DAVID T. W. COOK. Cos. 94. Cert. 98. 41.
WILLIAM MILLER. R. & K. 1825 F. 94. Cert. 667. 49.
DAVID CANTS. 51.
DAVID Mc CAULEY. Cos. 748. Cert. 390.
HEIRS OF Mc DONALD Mc QUEAN. C. & S. 1820 - 78 - Cert. 207. 53.
THOMAS BROADAWAY. Cos. 236. Cert. 589. 52.
53 DON JUAN LIND N°. 10.
JOSEPH Mc NEELY. Cos. 23. N°. 660.
MARGARET JAKSON. Cos. 54. Cert. 359.
HENRY Mc NEELY, Jr. Co. sup. N°. 817. Cert. 775. 56.
JAMES SCOTT, Sr. Cos. 119. Cert. 494. 57.
ELIJAH FERGUSON. R. & K. E. 31. Cert. 458. 59.
MARY REED. Cos. 56. Cert. 523. 55.
BRAZEL BURGESS. Cert. 1814. A. 1776. C. 29. 34.
BRAZEL BURGESS. Cert. 294. Cert. 6. 4.
A. SCOTT, JUN. R. & K. E. N°. 6. Cert. 76. 1.
JOHN SCOTT. Co. A. 146. 65.
MARY REED. Co. 56. Cer. 523. 63.
THOMAS HUDSON. Cos. 57. Cert. 526. 61.
JAMES Mc NEELY. Cos. 233. Cert. 527.
NORMAN Mc QUEEN. Cert. 322. 14.
ALEX. BAAN. Cert. 296.
DONALD Mc QUEEN. Cert. 298. 15.
ELIZABETH MORGAN. Cert. 269. 16.
THOMAS W. SCOTT. R. & K. 2 Cert. 631. 67.
WILLIAM HUDSON. Cert. 521. 19.
HENRY Mc NEELY. Cert. 524. 68.
WILLIAM STEWARD. R. & K. E. 234. Cert. 635. 70.
TEMPLE NIX. Cos. 277. Cert. 339. 71.
ACHMET FAUVER. Cos. 276. Cert. 356. 76.
DON JUAN LIND N°. 11. 670 Arp.s
POLYCARPE REGILLO. Cert. 570. 12.
P. REGILLO. 13.
WILLIAM ADAMS. B. N°. 14. 29.
JONATHAN BUTLER. Cert. 524. 22.
JOSEPH FLETCHER. Cert. 184. 21.
POLYCARPIO REGILLO. B. N°. 18. 20.
HEIRS OF JOHN SCOTT. R. & K. E. 6 - Cert. N°. 629. 69.
THOMAS EAST. R. & K. E. 2. N°. 452. 77.
JOHN & JOS. CARADINE. 80.
Lost Creek. Old Bayou Sara Road. Bayou Thompson's Creek. East Branch. Butler Creek. Beaver Dam Creek. Black Creek. E. Fork. Redwood Cr. St. Francisville and Liberty Road.

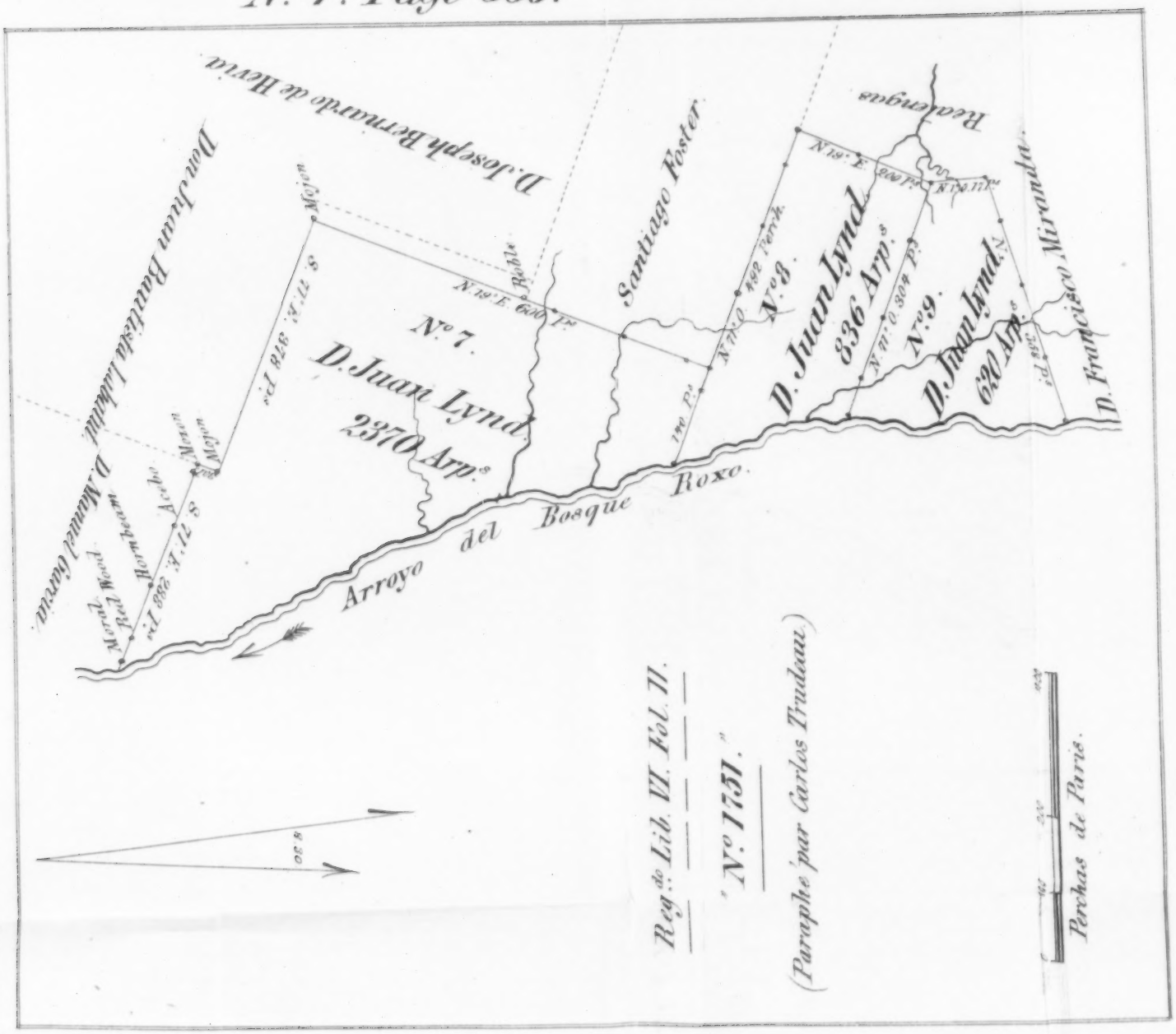
I John Lynch, Surveyor General of Louisiana, Certify that the Lands represented on this map as portions of the claim of John Lynd N°.10 & 11, cannot be satisfied or surveyed & located, because of superior titles emanating from the United States.

New Orleans, 5th August 1869.

John Lynch
Surveyor General La

T.2S.R.1W. T.2S.R.1E.

N.º 275. U. States vs. Lynds heirs.
N.º 4. Page 358.

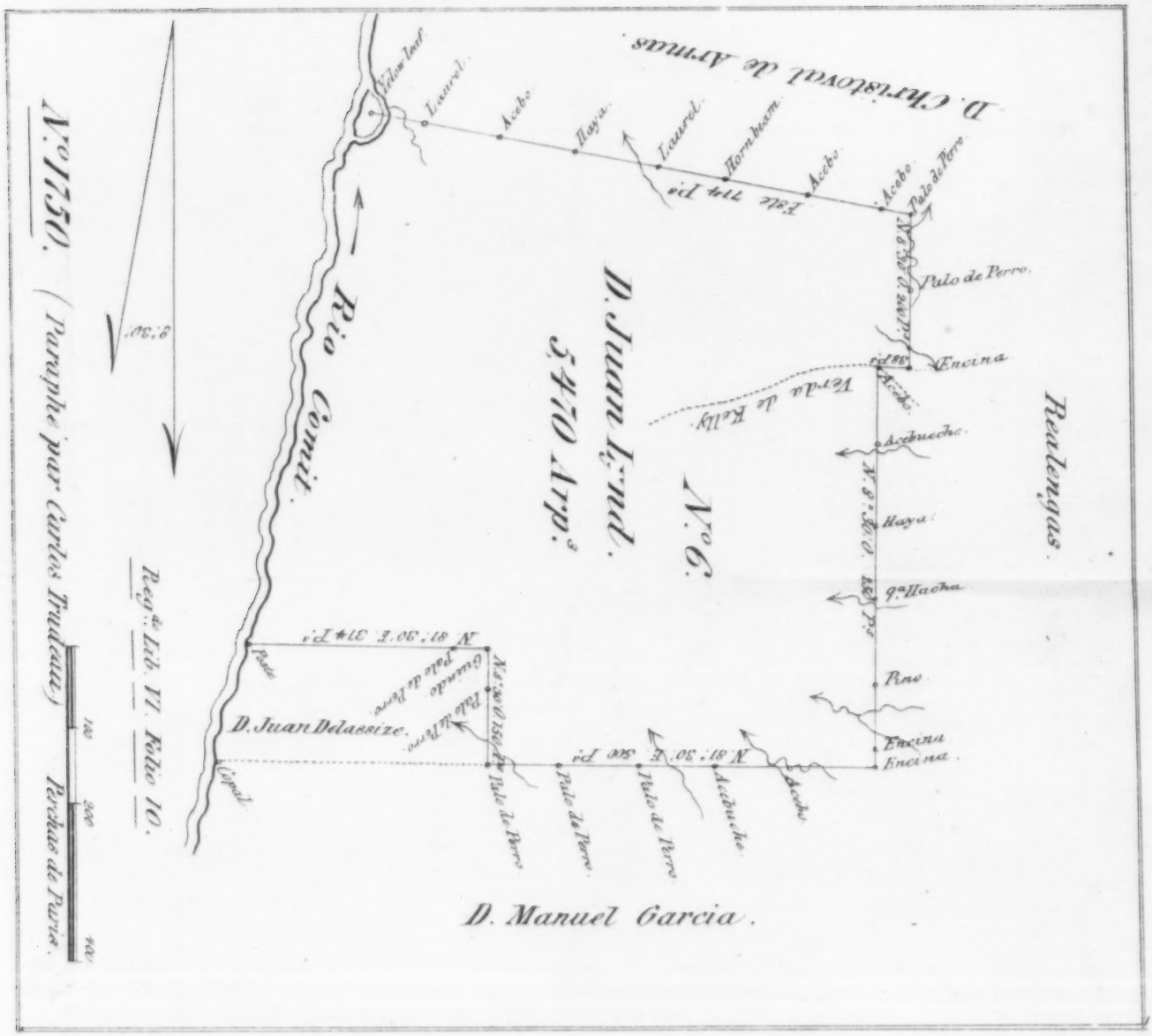


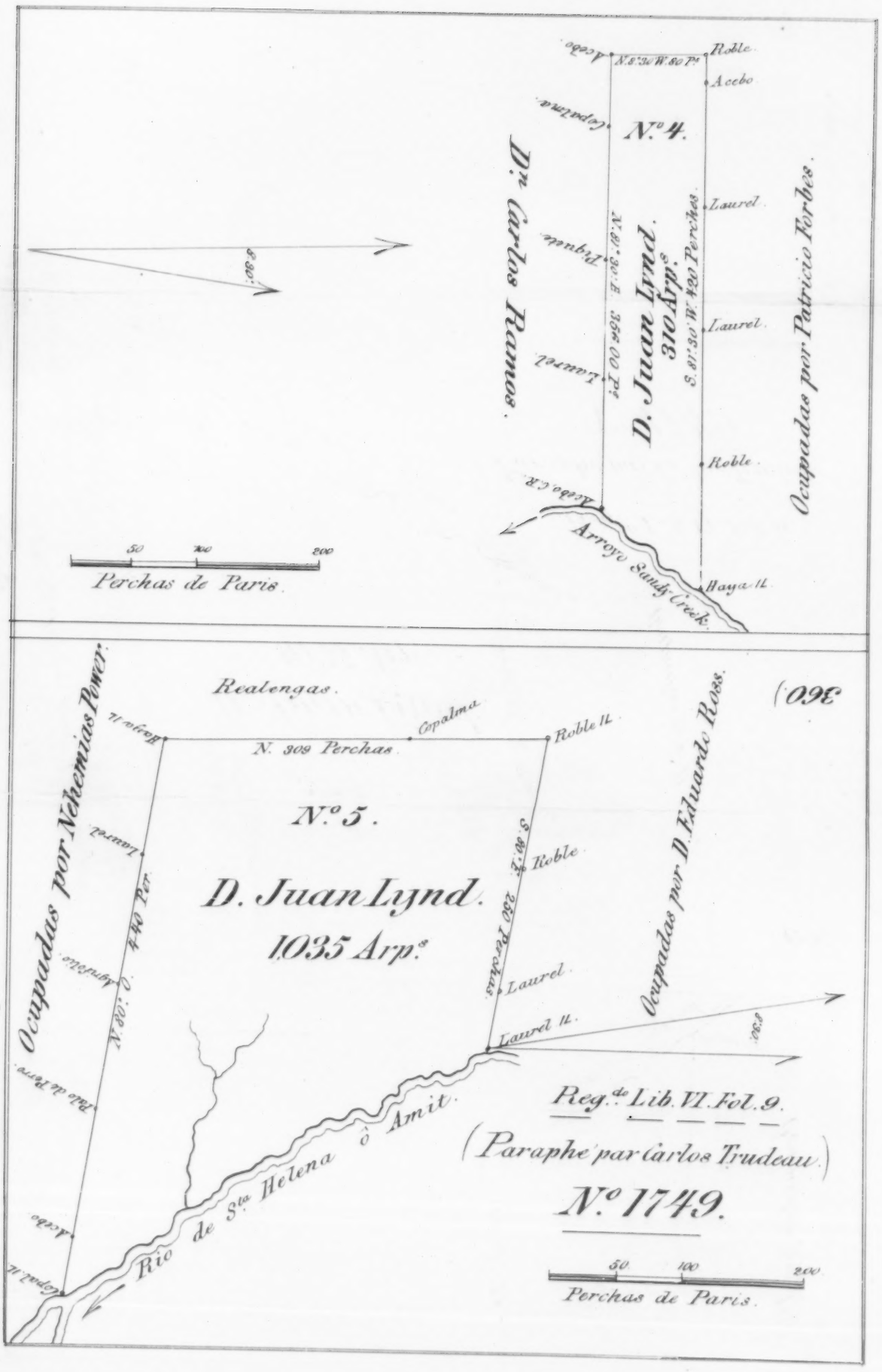
Reg.do Lib. VI. Fol. 11.

"N.º 1751."

(Paraphe par Carlos Trudeau.)

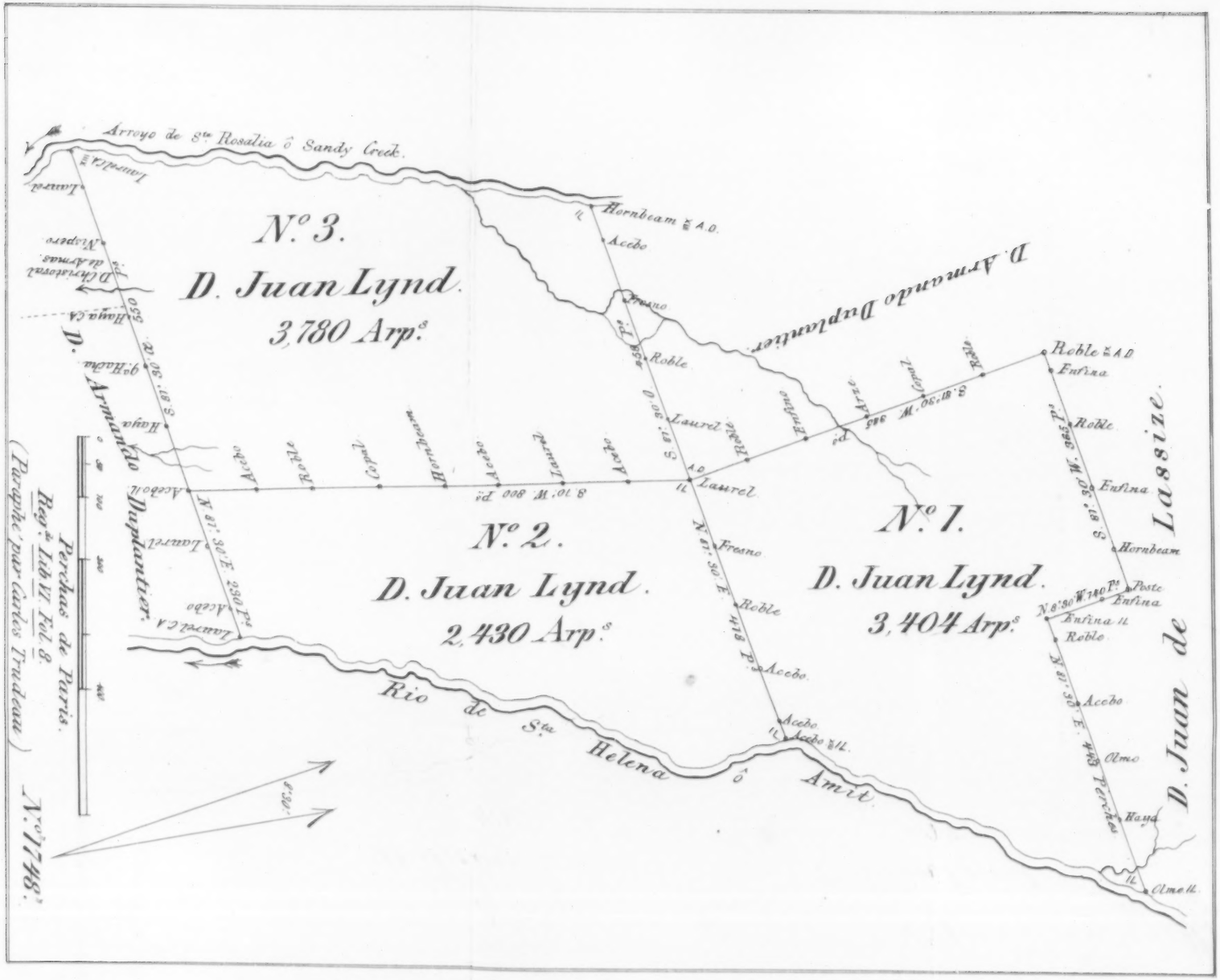
N.º 275. U. States vs. Lynd, dec.d
N.º 3. Page 358.





N.º 275. U. States vs. Lynd's heirs.
N.º 2. Page 358.

N.º 275. U. States vs. Heirs Lynd, dec.d
N.º 1. page 358.



N.º 288. Phil.a Wil. & Balt. R.R.C.º
N.º 3.- Vs. Dubois. Page 83.

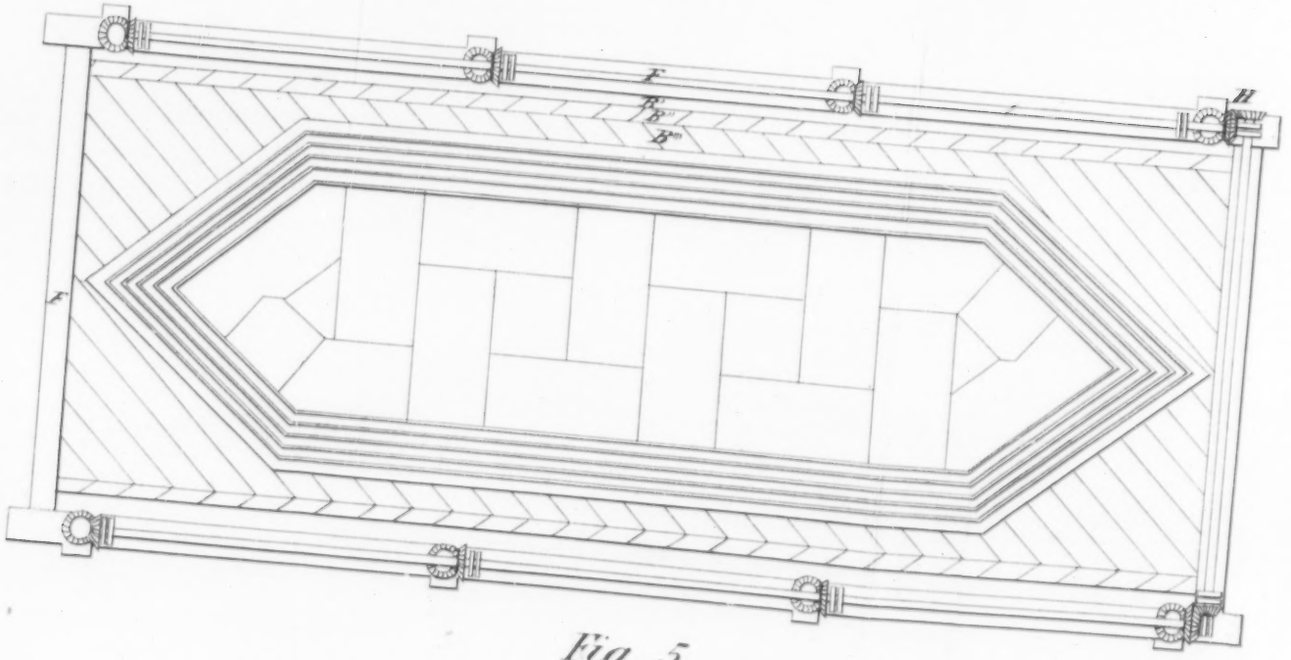


Fig. 5.

N.º 288. Phil.ª Wilmg.t & Balt. R.R. Co.
vs.
N.º 1. Dubois. Page 83.

Geo. A. Parker Impt. in Subaqueous Structure.
Pat.d Sep. 6. 1864.
(N.º 44,111)

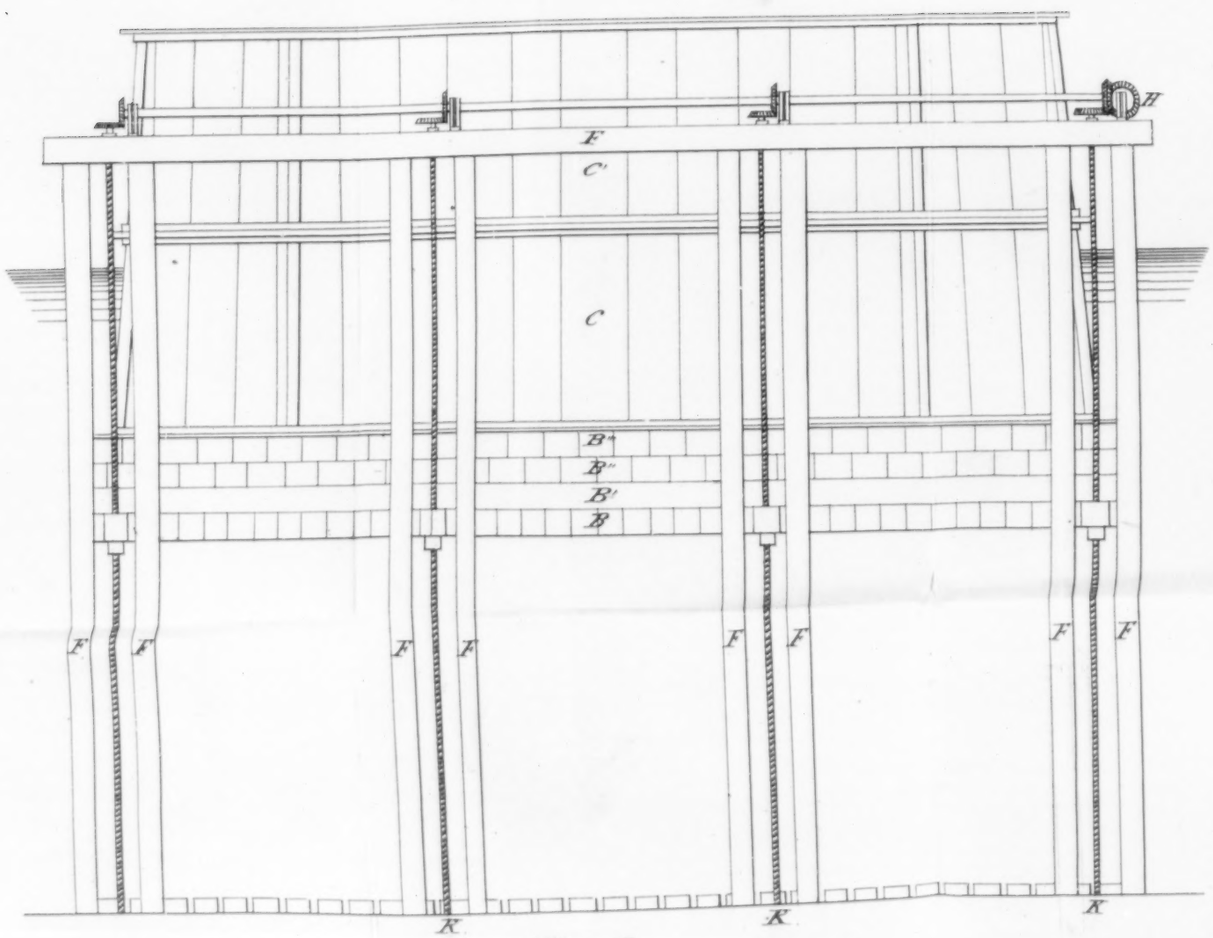


Fig. 1.

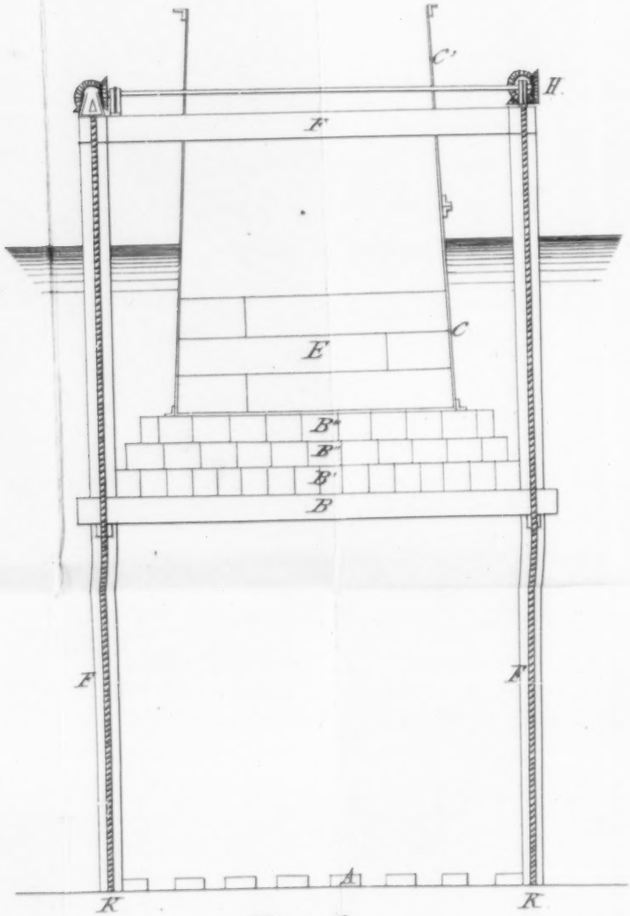


Fig. 2.

No. 283. Phil.a Wilm.t & Bal.t R. R. Co.
vs.
Du bois.
Page 91.

John Du Bois Imp.d Mode of Building Piers for Bridges.

Patented Sep.t 23. 1862.

No. 36.512.

Fig. 1.

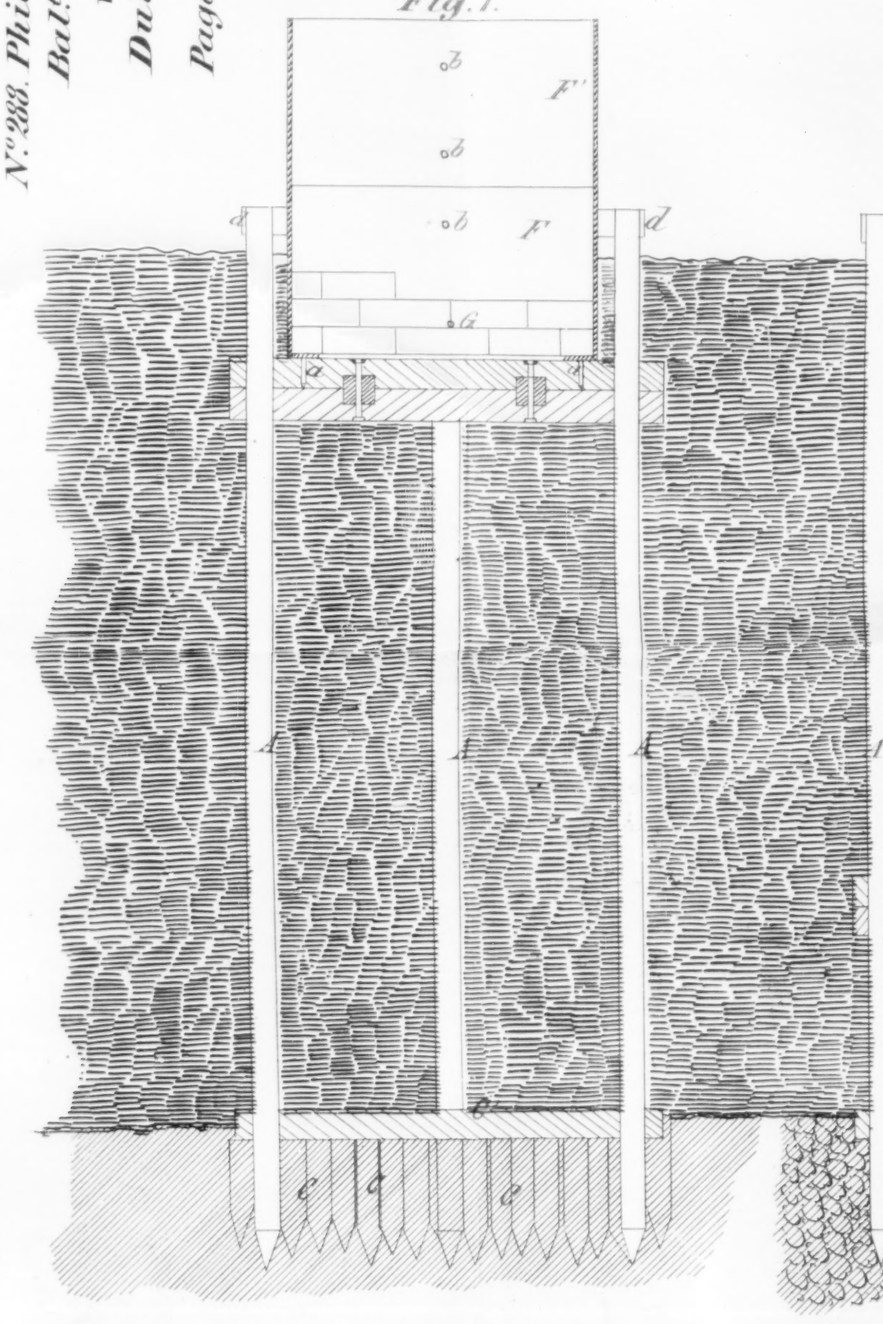


Fig. 2.

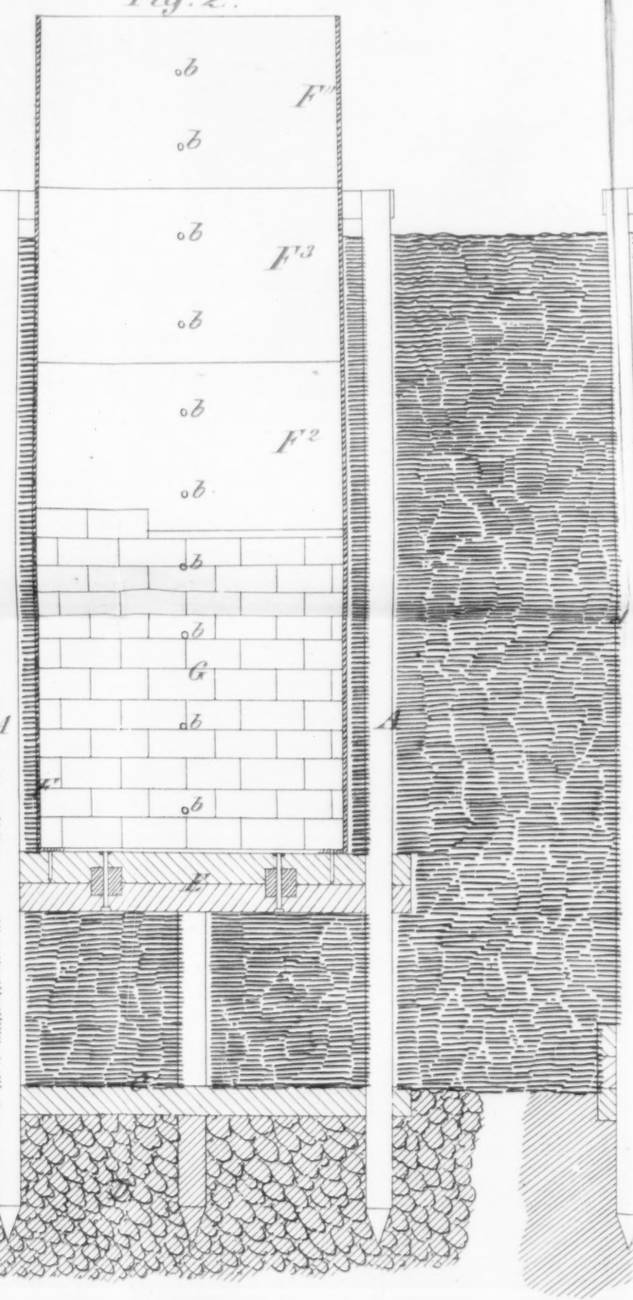
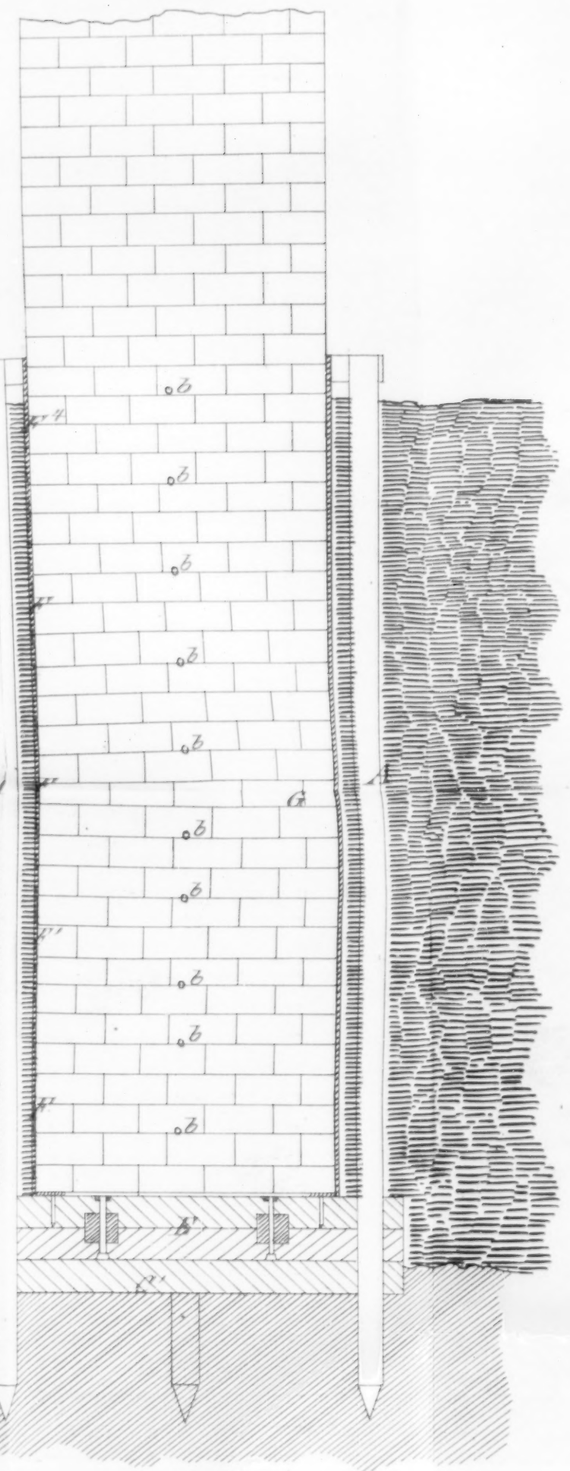


Fig. 3.



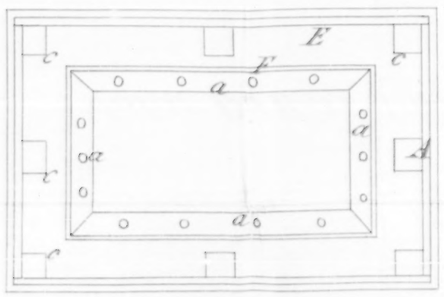
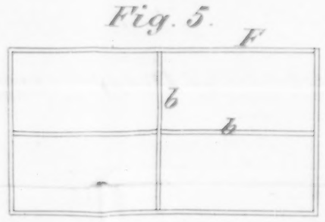


Fig. 4.

Fig. 5.



N°288. Phila. Wil. & Balt. R.R.Co.
N°2. Dubois. vs. Page 83.

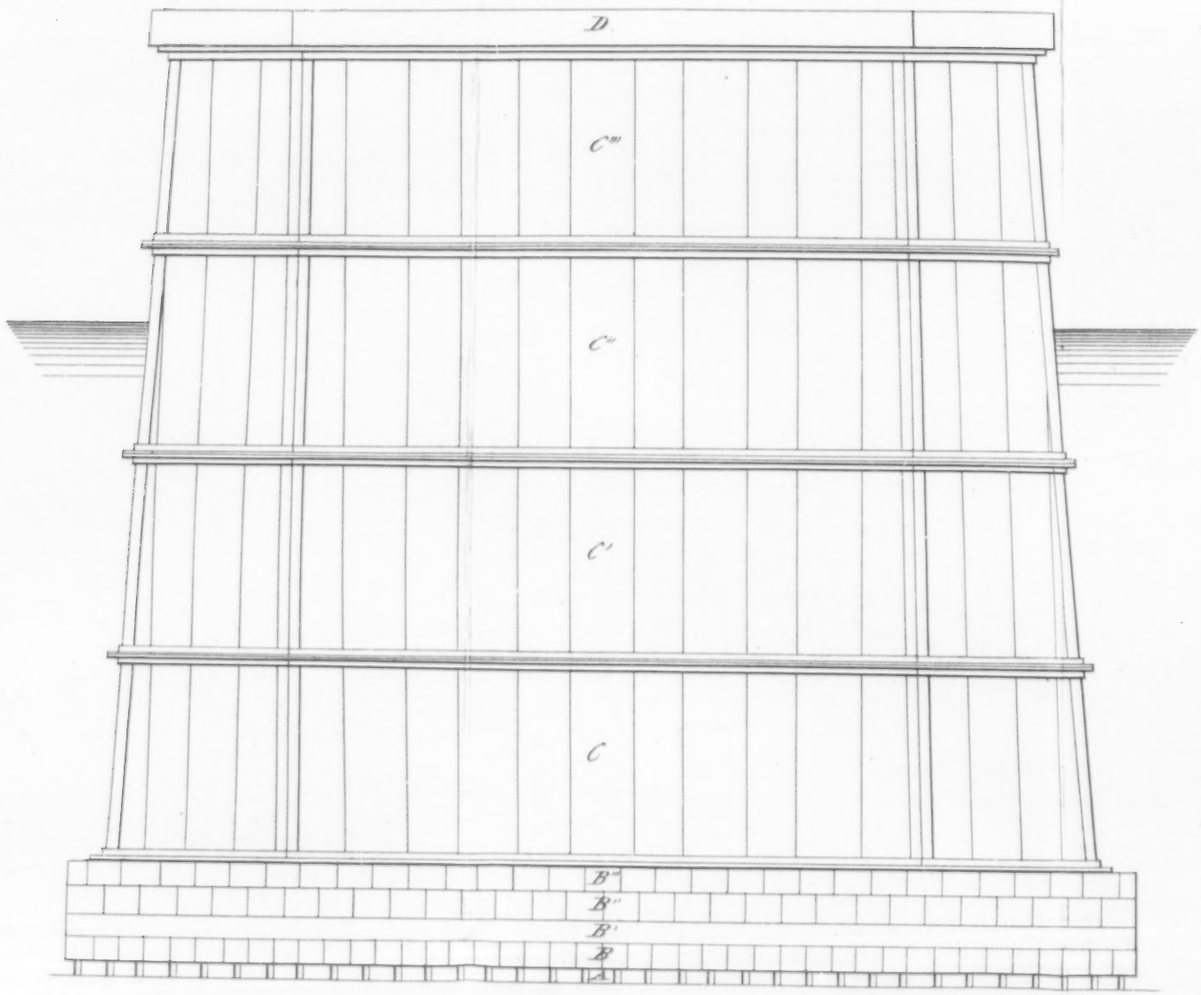


Fig 3.

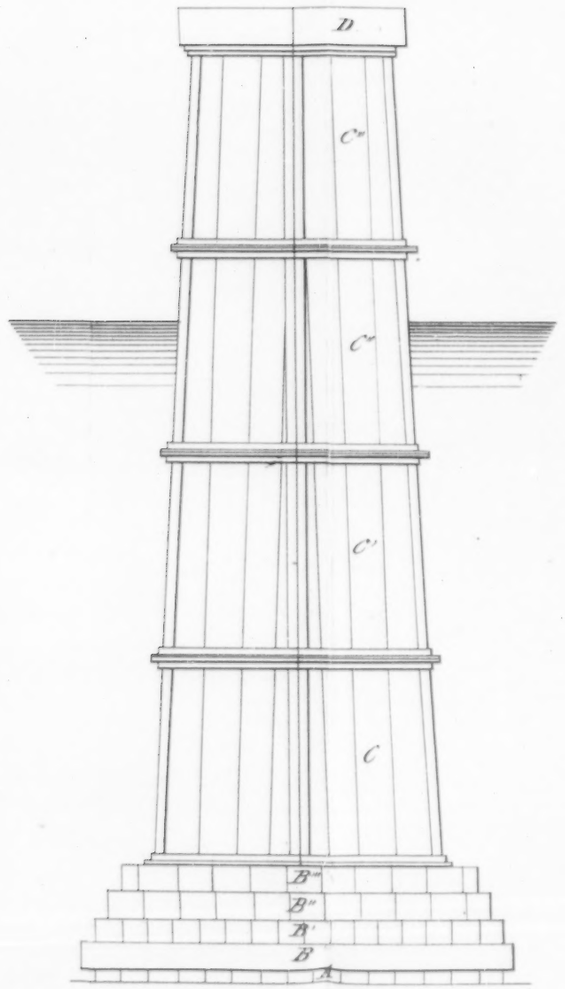


Fig. 4.